

MASON'S MINNESOTA STATUTES

1927

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EMBRACING THE ORGANIC LAWS, THE CONSTITUTION, AND THE STAT-
UTES CONTAINED IN THE GENERAL STATUTES OF 1923, EXCEPT
THOSE WHICH HAVE BEEN REPEALED OR SUPERSEDED
BY THE SUBSEQUENT LEGISLATION OF 1925
AND 1927

AND ALSO EMBRACING LAWS OMITTED FROM THE GENERAL STATUTES
1923, AND THE LAWS OF THE 1925 AND 1927 SESSIONS OF THE
LEGISLATURE UNDER APPROPRIATE CLASSIFICATION.

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cle of oil, gasoline, benzine or naphtha, or who shall cause the changing, altering or defacing in any manner any stamp, seal, brand or device affixed to any cask, barrel or other package or receptacle of oil, gasoline, benzine or naphtha by any deputy inspector, or who shall refill or use any cask, barrel or other package or receptacle having a deputy inspector's seal, mark, stamp or brand thereon without cancelling or defacing said seal, mark, stamp or brand and having the oil, gasoline, benzine or naphtha in such a cask, barrel or other package or receptacle properly examined or tested and stamped or marked under the provisions of this chapter, or who shall offer for sale, or who shall sell any such oil, gasoline, benzine or naphtha representing it to be in any respect other and different in quality or kind than as represented to the person so purchasing same, shall be liable to a fine of not less than five dollars nor more than five hundred dollars, or to imprisonment in the county jail for not more than six months, or to both such fine and imprisonment; and who shall sell or in any way dispose of any empty cask, barrel or other package or receptacle bearing a deputy inspector's seal, brand or stamp, without first thoroughly cancelling, defacing or removing such seal, brand, stamp, mark or any combination thereof, shall be liable to a fine of not less than five dollars nor more than five hundred dollars, or to imprisonment in the county jail not exceeding six months, or to both such fine and imprisonment.

Any person who shall violate any of the provisions of this act, not specifically mentioned in this section, shall be guilty of a gross misdemeanor. ('09 c. 502 § 14, amended '15 c. 271 § 6) [3632]

3786. Violations—Penalties—The provisions of Section 3632, General Statutes of Minnesota 1913, as amended by Chapter 271, Session Laws 1915, are hereby extended and made applicable to this act; provided, however, any person selling "blended" gasoline for "straight run" gasoline, shall be guilty of a gross misdemeanor and upon conviction shall be punished accordingly.

And provided further, any oil company or any agent or representative thereof who fails to notify deputy inspectors of the arrival of tank cars as provided in Section 13 of Chapter 520, Session Laws of Minnesota 1919, as amended hereby, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than fifty dollars nor more than one hundred dollars, or in default of payment of such fine, by imprisonment for not more than ninety days. ('09 c. 502 § 14, amended '15 c. 271 § 6; '19 c. 520 § 16; '21 c. 483 § 8)

Explanatory note—For G. S. 1913, § 3632, as amended by Laws 1915, c. 271, see § 3785, herein.
For Laws 1919, c. 520, § 13, see § 3781, herein.

3787. Inconsistent acts repealed—All acts and parts of acts inconsistent herewith are hereby repealed. ('19 c. 520 § 17)

3787
Sec. 1-2
Added
29 — 425
33 — 365

CHAPTER 21

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3788. Minnesota Dairy and Food Law—That the laws of Minnesota relating to dairy and food products be and the same hereby are amended, supplemented, revised, consolidated, rearranged and codified in the order and form following, which revision and codification may be known as the "Minnesota Dairy and Food Law." ('21 c. 495 § 1)

(See '19 c. 406, providing commission for codification of dairy and food laws.)

3789. Unlawful to sell certain food—It shall be unlawful for any person to manufacture, sell, use, transport, offer for sale or transportation, or have in possession with intent to use, sell or transport any article of food which is adulterated, misbranded, insufficiently labeled, unwholesome, poisonous or deleterious within the meaning of this act. ('21 c. 495 § 2)

3790. Definition of food—The term "food" as used herein shall include every article used for, or entering into the consumption of, or used or intended for use in the preparation of food, drink, confectionery or condiment for man, whether simple, mixed or compound. ('21 c. 495 § 3)

3791. Where food deemed to be adulterated—For the purposes of this act an article shall be deemed to be adulterated—

In the case of confectionery:

If it contains terra alba, barytes, coal tar dye, except those colors certified as harmless for use in foods under the United States Foods and Drugs Act, or the rules and regulations for its enforcement, or saccharine, chrome yellow, or other mineral substance or any other poisonous or injurious coloring or flavoring matter, or any substance or ingredient deleterious or detrimental to health or any vinous, malt or spirituous liquor or compound or narcotic drug.

In the case of food:

First: If any substance has been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength.

Second: If any substance has been substituted wholly or in part for the article.

Third: If any valuable constituent of the article has been wholly or in part abstracted.

Fourth: If it be mixed, colored, powdered, coated, or stained in a manner whereby damage or inferiority is concealed.

Fifth: If it contain any added boric acid or borates salicylic acid or salicylates, formaldehyde, sulphurous acid or sulphites, except such nominal percentage of sulphurous acid or sulphites as the process of manufacture may necessitate, hydrofluoric acid or fluorides, coal tar dye or color, except that such coal tar dyes or colors as are certified as harmless for use in foods by the Secretary of the United States Department of Agriculture under the United States Food and Drugs Act, or the rules and regulations for its enforcement may be used in still or carbonated beverages, candies, and such other food products as may be permitted and authorized under the rules and regulations promulgated by the Dairy and Food Commissioner, saccharine or any added poisonous or other added deleterious ingredient which may render such article unwholesome, injurious or detrimental to health.

Sixth: If it consist in whole or in part of a filthy, decomposed or putrid animal or vegetable substance, or any portion of any animal unfit for food, whether manufactured or not, or if it is the product of a diseased animal, or one that has died otherwise than by slaughter. ('21, c. 495, § 4; amended '25, c. 167, § 1)

Explanatory note—Laws 1925, c. 167, § 2, repeals all conflicting laws.

3792. When food is deemed to be misbranded—The term "misbranded" as used herein shall apply to all articles of food, or articles which enter into the composition of food, the package or label of which shall bear any statement, design or device regarding such article, or the ingredients or substances contained therein which shall be false or misleading in any particular, and to any food product which is falsely branded as to the state, territory or country in which it is manufactured or produced.

For the purposes of this act an article shall also be deemed to be misbranded—

In the case of food:

First: If it be an imitation of or offered for sale under the distinctive name of another article.

Second: If it be labeled or branded so as to deceive or mislead the purchaser, or purport to be a foreign product when not so, or if the contents of the package as originally put up shall have been removed in whole or in part and other contents shall have been placed in such package, or if it fail to bear a statement on the label of the quantity or proportion of any morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate or acetanilide or any derivative or preparation of any of such substances contained therein.

Third: If in package form the quantity of the contents be not plainly and conspicuously marked on the outside of the package in terms of net weight, measure or numerical count; provided, however, that reasonable variations may be permitted, and tolerances and also exemptions as to small packages may be established, by rules and regulations made in accordance with the provisions of sections 15, 16 and 17 of this act; and provided further, that the dairy and food commissioner shall have full authority to determine when food is in package form.

Fourth: If the package containing it or its label shall bear any statement, design or device regarding the ingredients or the substances contained therein, which statement, design or device shall be false or misleading in any particular. ('21 c. 495 § 5)

Sections 15, 16, 17 are §§ 3804 to 3806, herein.

3793. Appointment of dairy and food commissioner—The governor shall appoint a dairy and food commissioner, whose term of office shall extend to the first Monday in January of the odd numbered year next after his appointment and until his successor qualifies; but the governor may supersede such commissioner at pleasure. He shall cause to be enforced all the provisions of this act and all other laws designed to prevent fraud and deception in the manufacture and sale of food and the several ingredients thereof, and shall have authority to take all proper educational measures to foster and promote the manufacture and sale of pure food products. All appointees hereunder shall be qualified electors of this state. The commissioner shall be a practical dairyman; the assistant commissioner, chief chemist, chemists, inspectors and all agents and other persons appointed or employed by the commissioner shall be practical men and especially trained and equipped for their particular line of work. He shall report on or before the fifteenth day of each session of the legislature concerning his official acts, showing receipts and disbursements of his office, and may issue public bulletins of information from time to time. ('21 c. 495 § 6)

Office of dairy and food commissioner abolished. Department of Dairy and Food, with dairy and food commissioner. See § 53-25, herein.

3794. Salaries of dairy and food commissioner and employes—The annual salary of the dairy and food commissioner and the position, number and annual salary of the subordinates to be appointed by him in his department are hereby fixed as follows:

The commissioner, four thousand dollars; assistant commissioner, three thousand dollars; secretary, two thousand dollars; chief chemist, three thousand five hundred dollars; chief clerk, thirteen hundred and twenty dollars; statistician, fifteen hundred dollars; laboratory clerk and stenographer, twelve hundred dollars; one stenographer, twelve hundred dollars; general clerks as in his judgment may be necessary, not to exceed two at twelve hundred dollars each; two stenographers, not to exceed twelve hundred dollars each; three assistant chemists and twenty-two inspectors at a minimum annual salary of fifteen hundred dollars each; but the commissioner may, in consideration of faithful and continuous service, increase the salary of any assistant chemist or inspector not more than two hundred dollars for each year such assistant chemist or inspector has been employed by the department until such salary reaches two thousand dollars, which shall be the maximum; provided, that the provisions of this act shall not apply to chapter 97, Laws of 1913, and amendments thereto. ('21 c. 495 § 7, amended '21 c. 520 § 1; '23 c. 183 § 1)

Laws 1913, c. 97, referred to, was repealed by Laws 1921, c. 495, § 83. See § 3870 herein.

3795. Expenses—The expenses of the commissioner and his subordinates necessary and actually incurred in the discharge of his official duties shall be paid in addition to salary, upon itemized vouchers approved by the commissioner or assistant commissioner. ('19 c. 316 § 2, amended '21 c. 520 § 2)

3796. Inconsistent acts repealed—All acts and parts of acts inconsistent herewith are hereby repealed; provided, that this act shall not be construed as repealing or affecting the provisions of Chapter 300 of the Laws of 1905. ('19 c. 316 § 3, amended '21 c. 520 § 3)

3797. Offices and reports—Rooms shall be provided in the capitol for the office and laboratory of the commissioner. He may require reports from persons engaged in the purchase, manufacture or sale of dairy products and all owners or operators of skimming stations or other places engaged in the business of purchasing milk or cream, and operators of condenseries, dry milk factories, creameries and cheese factories shall on March 1st in each year, and at such other times as the commissioner may fix, send to him a full and accurate report of the amount of business done during the year preceding, together with such other statistical information as the commissioner may require. ('21 c. 495 § 8)

3798. Right of inspection—For obtaining information regarding suspected violations of law, the commissioner, his assistants, inspectors, appointees, agents and employes shall have access to all places where any article of food, or other article, the manufacture, sale, use or transportation of which is restricted, regulated or prohibited by this act, or by any law of this state, is or may be manufactured, prepared, stored, sold, used, transported, offered for sale or transportation, or had in possession with intent to use, sell or transport, or where cows or other animals are pastured or stabled, to cars or other carriages used for transportation of such articles or animals, and to places where food is or may be cooked, prepared, sold or kept for sale to or for the public or distributed as a part of the compensation of servants or agents, including pub-

lic and private hospitals, lumber and railroad camps, inns, boarding and eating houses, drinking places, dining cars, boats and other places where any of said articles may be manufactured, sold, used, offered for sale or transportation, or had in possession with intent to use, sell or transport, and they may inspect any package, receptacle or container found therein apparently containing any article of food or ingredient thereof, or any other article the manufacture, use, sale or transportation of which is restricted, regulated or forbidden by this act or by any law of this state, and may take samples therefrom for analysis. Any person obstructing such entry or inspection, or failing upon request to assist therein, shall be guilty of a misdemeanor. ('21 c. 495 § 9)

3799. Seizure, search, warrants—The commissioner may seize all food, the manufacture, transportation, sale or use of which is prohibited by this act, or which is manufactured, sold, used, transported, kept or offered for sale, use or transportation, or had in possession with intent to sell, use or transport in violation of any provision of this act, or in violation of any rule, regulation, definition, standard or ruling made, adopted and published hereunder, and for this purpose he and his several assistants, inspectors, agents and employes shall have the powers of a constable. Such seizure may be made without a warrant, but in such case, as soon as practicable, he shall cause the person suspected of such violation of law to be arrested and prosecuted therefor. When necessary, a search warrant may be issued, as in the case of stolen property, the form of the complaint and of the warrant being adapted to the purpose of this act. ('21 c. 495 § 10)

3800. Execution of warrant—Disposition of food seized—The search warrant shall be directed to the sheriff or any constable of the county, and to the chief of police, or any police officer or marshal of any municipality, and may be executed by the commissioner or any of his agents or employes. No security for costs shall be required thereon nor upon any prosecution under this act. All food seized, whether with or without warrant, shall be safely kept by the officer or person seizing the same, so long as it may be needed for evidence; and if found upon trial to have been manufactured, sold, used, transported, kept or offered for sale, use or transportation or had in possession with intent to use, sell or transport in violation of law, it shall be forfeited to the state, and shall be disposed of as directed by the court. ('21 c. 495 § 11)

3801. Price not collectible—No action shall be maintained for the purchase price or value of any food, the sale of which is prohibited by this act, or which is manufactured, used, sold, transported, kept or offered for sale, use or transportation, or had in possession, with intent to sell, use or transport in violation of law; nor shall any person be liable for the price or value of food or board furnished in violation of this act. ('21 c. 495 § 12)

3802. Additional powers and authority—The dairy and food commissioner, by himself or any of his assistants, inspectors, agents or employes, in addition to the authority and powers otherwise conferred by law, is authorized and empowered to have and to take access to any and all trucks, aeroplanes, airships, vehicles and railroad cars of every sort and nature transported or being within this state, all railroad stations, storage houses, warehouses, express offices or other places wherein at any time there may be food transported or shipped into from without this state, whether or not such food has been manufactured, sold or given away

without the state, provided, that such food was manufactured, sold or given away with the intent that it be delivered, had or used within this state; and the dairy and food commissioner shall have the same power and authority to open any package, car or vessel containing food so transported or shipped into from without the state, which contains or which he has reason to believe contains any such food; to inspect the contents thereof and to take samples for analysis and examination, all after the same manner and with the same procedure as obtains by law in reference to similar goods manufactured, sold, transported, offered for sale, use or transportation, or had in possession with intent to sell, use or transport within this state. If it shall appear that any such food is adulterated, misbranded, insufficiently labeled, unwholesome, poisonous or deleterious, the dairy and food commissioner shall have the same rights and remedies and shall enforce the same in the same manner as in the case of food manufactured, sold, transported, offered for sale, use or transportation, or had in possession with intent to sell, use or transport within this state. On receiving notice from the commissioner or any authorized agent or employe that he desires to inspect the contents of any such package, can or vessel, it shall be the duty of any common carrier, storage man, warehouseman or their employes, or other person having the same in his possession or under his control, to withhold the same from delivery within this state for such period of time as may be reasonably necessary for the inspection, examination and analysis thereof. It is further made the duty of all such persons to render to the commissioner and his agents and employes all the assistance in their power when so required to effectuate the purposes of this act. In case such inspection, examination or analysis of any such food shall disclose it to be adulterated, misbranded, insufficiently labeled, unwholesome, poisonous or deleterious within the meaning of this act, such persons shall on demand disclose to the commissioner the names and addresses of the consignor and consignee of the package, can or vessel containing the same, and the commissioner, before proceeding further, shall notify such consignor and consignee in writing at their respective addresses of the result of such inspection, examination or analysis as so disclosed. Any common carrier, warehouseman, storageman, employe or other person having such food in his possession or under his control, failing or refusing to comply with any of the provisions of this act shall be deemed guilty of a misdemeanor. ('21 c. 495 § 13)

3803. Authority of the commissioner to render certain food unsalable—The dairy and food commissioner, his assistants, inspectors, agents and employes, shall also have power and authority in their discretion to render unsalable for use as food, any food, the sale or use of which is prohibited by this act, or which is manufactured, sold, used, transported, offered for sale or transportation, or had in possession with intent to use, sell or transport in violation of any provision of which act, or in violation of any provision of any rule, regulation, definition, standard or ruling made, adopted and published hereunder, and the said commissioner and his several assistants, inspectors, agents and employes shall be exempt from liability for any such action. The test of the condition of any such food shall be its condition at the time of discovery. Any reasonable and necessary means may be adopted for rendering such food unsalable for use as food. ('21 c. 495 § 14)

3804. Definitions and standards—For the purpose

of securing uniformity, so far as practicable, between the laws of this state and those of the federal government enacted to prevent fraud and deception in the manufacture, use, sale and transportation of food, and to protect and preserve the public health, it shall be the duty of the dairy and food commissioner to fix, adopt and publish, from time to time, by ruling or rulings, in writing, definitions and standards of quality, purity and strength of articles of food for which no definitions and standards are prescribed by law, and such definitions and standards so fixed, adopted and published shall be the lawful definitions and standards thereof before all courts; provided, that when definitions and standards have been or may be fixed by the secretary of the Department of Agriculture of the United States, except in cases where definitions or standards otherwise are prescribed by law, they shall be accepted by the dairy and food commissioner and published as definitions or standards for Minnesota. Before any such definitions or standards shall be deemed to be fixed and adopted the ruling or rulings fixing and adopting the same shall be published twice in a legal newspaper of general circulation published at the capital of this state and from and after the tenth day succeeding the date of the last such publication, such ruling or rulings shall have the force and effect of law. An affidavit of such publication, setting forth the said ruling or rulings in full and the dates of such publication thereof, shall be made by the publisher of such newspaper or by the manager or agent of such publisher, and shall be kept on file by the commissioner in his office with the original of such ruling or rulings. Such affidavit of publication, or a duly certified copy thereof, shall be prima facie evidence of the facts therein contained and of the due fixing, adopting and publishing of the said ruling or rulings, therein set forth. Until such definitions and standards are fixed, adopted and published, the definitions and standards heretofore fixed and adopted by the commissioner shall remain in full force and effect, except as otherwise prescribed by law. Any person who shall manufacture, use, sell, transport, offer for sale or transportation or have in possession with intent to sell, use or transport any article of food which does not conform to such definition and standard so fixed, adopted and published, shall be deemed guilty of a violation of this act. ('21 c. 495 § 15)

3805. Rules and regulations—For the purposes aforesaid it shall also be the duty of the dairy and food commissioner to make and publish uniform rules and regulations, not inconsistent with law, for carrying out and enforcing the provisions of this act, which rules and regulations shall be approved by the attorney general as to form and legality and shall be made and published and affidavits of publication made and filed in the manner specified in Section 15 of this act. From and after the tenth day succeeding the date of the last such publication, such rules and regulations shall have the force and effect of law. The affidavit of publication, or a duly certified copy thereof, shall be prima facie evidence of the facts therein contained, and of the due making and publishing of the rules and regulations therein set forth. Until such rules and regulations are made and published, the rules and regulations heretofore made by the commissioner shall remain in full force and effect, except as otherwise prescribed by law. Any person who shall manufacture, use, sell, transport, offer for use, sale or transportation, or have in possession with intent to use, sell or transport, any article of food contrary to the provisions of any such rule or regulation, or who shall fail

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to comply with any such rule or regulation, shall be deemed guilty of a violation of this act. ('21 c. 495 § 16)

Explanatory note—Section 15 is § 3804, herein.

3806. Labeling—For the purposes aforesaid, it shall also be the duty of the dairy and food commissioner by ruling or rulings not inconsistent with law, to require that any article of food or the package, receptacle or container thereof, before it be sold, transported, used, offered for sale or transportation, or had in possession with intent to use, sell or transport within this state, shall be labeled, stamped, stenciled, marked or branded in such manner as to plainly exhibit to the purchaser any or all of the following data or information, to-wit: The percentages and true composition of such food article, its quality, strength, quantity, source of its manufacture or production or the person by or for whom the same is manufactured, produced, packed or shipped; and the said commissioner shall also have authority to prescribe by such ruling or rulings, the date on which the same shall take effect and be in force, and also the form, size, style and wording of and the place, time, method, means and manner of use of all such labels, stamps, stencils, brands and markings, which ruling or rulings shall be made and published and affidavits of publication made and filed, in the manner specified in Section 15 of this act. From and after the tenth day succeeding the date of the last such publication, unless a later date be fixed in the ruling for the taking effect thereof, and in such case from and after such date so fixed, such ruling or rulings shall have the force and effect of law.

The affidavit of publication, or a duly certified copy thereof, shall be prima facie evidence of the facts therein contained, and of the due making and publishing of the ruling or rulings therein set forth. Until such rulings are made and published and in effect as aforesaid, the rulings heretofore made by the commissioner shall remain in full force and effect, except as otherwise prescribed by law. Any person who shall fail to comply with such ruling or rulings shall be deemed guilty of a violation of this act. ('21 c. 495 § 17)

3807. Analysis—Evidence—It shall be the duty of the chief chemist and assistants to make analysis and examinations of such articles as shall be furnished to them by the commissioner for the purpose of determining from such examination whether such articles are adulterated, misbranded, insufficiently labeled, unwholesome, poisonous or deleterious within the meaning of this act, and whether such articles have been manufactured, used, sold, transported, offered for use, sale or transportation or had in possession with intent to use, sell, or transport in violation of any provision of this act or of any definition, standard, rule, regulation or ruling made and published thereunder, and to certify the result of such analysis and examination to the commissioner. A copy of the result of the examination or analysis of any such article, duly authenticated, by the chemist making such analysis or examination, under oath of such chemist shall be prima facie evidence in all courts of the matters and facts therein contained. ('21 c. 495 § 18)

3808. Duty to prosecute—It shall be the duty of every prosecuting officer to whom the commissioner shall report any violation of this act, to cause appropriate proceedings to be commenced and prosecuted in the proper courts without delay for the enforcement of the penalties as in such case herein provided. ('21 c. 495 § 19)

3809. Penalties—Any person violating or failing to comply with any of the provisions of this act, or any of the provisions of any of the rules, regulations, definitions, standards, or rulings made and published thereunder shall be deemed guilty of a misdemeanor, and, save as herein otherwise specifically provided, for each first offense shall be punished by a fine of not less than fifteen dollars, or by imprisonment for not less than twenty days, and for each subsequent offense, by a fine of not less than fifty dollars or by imprisonment for not less than sixty days. ('21 c. 495 § 20)

3810. Disposition of receipts—In all prosecutions under this act, save as herein otherwise specifically provided, the fine or fines collected by and under the same shall be forthwith transmitted by the officer collecting the same to the state treasurer, to the credit of the general revenue fund, and all other fees and payments made to the dairy and food commissioner, except as aforesaid, shall be accounted for and disposed of in the same manner. ('21 c. 495 § 21)

3811. Milk and cream—No person shall sell or knowingly buy unwholesome or adulterated milk or cream. Milk or cream that has not been well cooled and aerated, or to which a preservative has been added; milk drawn from cows kept in crowded conditions or in places not well ventilated or lighted, or which from any cause are filthy or insanitary, or from unclean or diseased cows, or those fed with garbage or any filthy, decayed, putrid or unwholesome animal or vegetable substance; milk drawn from cows within fifteen days before or five days after calving; and milk or cream which has been kept in any place where bad air exists, and cream taken from unwholesome or adulterated milk, shall be deemed unwholesome and adulterated within the meaning of this act. Milk from which any normal ingredient has been abstracted, or milk containing any substance not a normal constituent thereof, or containing less than three and one-fourth per cent of butterfat, and cream in which there is less than 20 per cent of butterfat, or which contains any foreign thickening or coloring substance, or any abnormal ingredient whatsoever, shall be deemed adulterated; nor shall any article of food be manufactured from unwholesome or adulterated milk or cream except as in the next following section hereof provided. ('21 c. 495 § 22)

3812. Skimmed milk—Notwithstanding the provisions of Section 22, milk from which the cream has been removed, if such milk is otherwise wholesome and unadulterated, may be sold as such to makers of skimmed milk cheese, and by licensed dealers; but in the latter case only from vessels legibly marked "skimmed milk" in plain, common black letters upon a light colored background, each letter being at least one inch high and one-half inch wide, and said words being placed on the top or side of such vessel. These requirements, however, shall not apply to skimmed or separated milk delivered to any patron of a creamery who furnishes milk thereto, but all skimmed milk from creameries and all whey from cheese factories so delivered to patrons shall first be pasteurized at a minimum temperature of 145 degrees Fahrenheit for not less than thirty minutes, or at a minimum temperature of 180 degrees Fahrenheit for continuous flow pasteurization. ('21 c. 495 § 23)

Section 22 is § 3811, herein.

3813. Milk and cream—Sales licensed—No person shall sell milk or cream without being licensed by the dairy and food commissioner, and the fee for such license shall be \$1.00 for each place or vehicle from

which sale is made. Every such license shall expire May 1st, next after its issue; shall be given only to a person owning or leasing the vehicle or place from which sales are to be made, and shall not be transferred. Each license shall be numbered and shall contain the name, residence and place of business of the licensee, the names of all employees authorized to act thereunder, and the number of vehicles and places to be used. The name and number of the license shall be plainly inscribed on both sides of each vehicle in use for the purpose aforesaid, and the license shall be conspicuously posted in each place where such milk or cream is sold, and the making of every sale from a vehicle not so inscribed or from a place where such license is not so posted, shall be deemed the commission of a misdemeanor. Provided that any person may sell or peddle the products of the farm or garden occupied and cultivated by him without obtaining a license therefor. ('21 c. 495 § 24)

3814. Licenses revoked—The commissioner may withhold a license from any applicant therefor under any provision of this act whom he may deem unworthy, and may revoke any license issued by him to any licensee who has violated the terms thereof, or who has failed to comply with any requirement of this act, or refused or failed to obey his lawful request or direction, and every conviction of the licensee for an offense punishable under this act shall be a sufficient ground for such revocation. ('21 c. 495 § 25)

3815. Milk and cream sold and purchased by weight and paid for on basis of milk fat—Babcock tests—Unlawful acts—Penalty—All milk and cream sold or purchased for the purpose of manufacture into butter or cheese, or for the purpose of condensing or drying the same, shall be sold and purchased by weight and payment shall be made therefor upon the basis of milk-fat therein contained and not otherwise. The percentage of milk-fat in such milk and cream shall be determined by the Babcock test and by employing a standard official method for operating said test, which method shall be that adopted, prescribed and set forth with specifications in detail, in the rules and regulations from time to time made and published by the commissioner under and pursuant to authority therefor conferred by the Minnesota Dairy and Food Law for the purpose of carrying out and enforcing the provisions thereof, which authority hereby expressly is declared to be applicable in the premises.

All glassware, test-bottles, pipettes, acid measures, chemicals, scales and other apparatus used in the operation of said test shall conform to the specifications set forth in said method.

Any person who shall use any appliances other than the Standard Babcock glassware for measuring or testing milk or cream sold or purchased at prices determined upon the basis of milk-fat therein contained, or who shall manufacture or sell Babcock glassware which is not constructed and/or graduated in accordance with said specifications, or who shall employ any test other than the Babcock test or any method other than the said Standard official method for determining the milk-fat content of milk or cream or who shall underread or otherwise falsify or manipulate the reading of the test, or who shall falsely state, certify or use in the purchase or sale of milk or cream a misreading of such test, whether the test or actual reading shall have been made by such person or by any other person, shall be deemed guilty of a misdemeanor. ('21, c. 495, § 26; amended '27, c. 154, § 1)

3816. Cans to be cleaned—Every person delivering milk, cream or ice cream to any other person, in cans or other vessels shall have such cans or vessels free from any deleterious substance, filth or rust, and in a wholesome condition for containing such milk, cream or ice cream. Every person receiving milk, cream or ice cream in cans or vessels which are to be returned to the sender or seller, shall cause such vessels to be promptly emptied, thoroughly cleansed and immediately returned. ('21 c. 495 § 27)

3817. Custom factories—Records—No person engaged in making butter or cheese for others out of cream or milk furnished by them, shall withhold or permit to be withheld, any part of the cream or milk so furnished, or any product thereof without the knowledge and consent of the owner. Every maker shall keep a record of all quantities of milk and cream received each day and from whom received and the disposition thereof, also of the weight of all cheese and butter made each day and of the number and aggregate weight of all packages of cheese and butter delivered to those furnishing milk and cream for manufacture or otherwise disposed of. Such records shall be exhibited on request of the commissioner and his employes and to all persons furnishing milk and cream to such maker. ('21 c. 495 § 28)

3818. Minnesota brands—Any person manufacturing in this state, cheese which is wholly and exclusively the product of wholesome and unadulterated milk, or butter which is wholly and exclusively the product of wholesome and unadulterated milk and cream, may label and sell the same as "Minnesota Full Milk Cheese" or "Minnesota Pure Dairy (or Creamery) Butter," as the case may be, and may add to such brand or label the name of the county wherein such cheese or butter is made, using for the purpose a numbered stencil brand furnished by the dairy and food commissioner. Such commissioner shall issue to such manufacturer under such regulation as to the custody and use thereof as the commissioner may prescribe, uniform stencil brands for such marking, keeping a register of the number of each and of the name and place of residence of the manufacturer receiving the same.

Any person who shall, without authority of the commissioner, as aforesaid, use any such brand or label, or any person who shall use such brand or label upon cheese or butter below the grade aforesaid, shall be guilty of a misdemeanor. ('21 c. 495 § 29)

3819. Inspection of dairies—At such times as he may deem proper the commissioner shall cause to be inspected all places where dairy products are made, stored, or served as food for pay, and all places where cows are kept by persons engaged in the sale of milk or cream, and shall require the correction of all unsanitary conditions and practices found therein.

Every refusal or neglect to obey any lawful direction of the commissioner or his agent given in carrying out the provisions of this section shall be deemed a misdemeanor. ('21 c. 495 § 30)

3820. Local inspection—The governing authority of any municipal corporation may by ordinance provide for the inspection of milk, cream and butter sold within its limits, and of dairies and dairy herds kept for the production of such milk, cream or butter and may prescribe the terms upon which such sales may be made and fix penalties for violation thereof; but no such ordinance shall conflict with any law of this state, or interfere with any power or duty of the dairy and food commissioner or his official subordinates. ('21 c. 495 § 31)

3821. Dairy and creamery butter—No person shall manufacture, for sale, or sell any dairy or creamery butter which contains more than 16 per cent of water by weight or less than 80 per cent of butter fat by weight. ('21 c. 495 § 32)

3821-1. Manufacture of butter—Overrun—What constitutes—For the purposes of this act "overrun" is the difference between the weight of any given amount of pure butter fat and the weight of the butter manufactured therefrom, and this difference, ascertained in any case, divided by the given amount of pure butter fat in such case and multiplied by 100, is the "percentage of overrun," in the manufacture of butter. ('27, c. 162, § 1)

3821-2. Same—Overrun permitted—It shall be and hereby is declared to be unlawful for any person to have or permit a percentage of overrun in excess of 24 per cent in butter manufactured by him. ('27, c. 162, § 2)

3821-3. Same—Penalty—Any person violating any provision of this act shall be deemed guilty of a misdemeanor, the minimum punishment for which shall be a fine of \$25 or imprisonment for 20 days. ('27, c. 162, § 3)

3821-4. Same—Prosecutions—Evidence—The reports required by law to be made and which are made to the commissioner of dairy and food by persons engaged in the manufacture of butter shall be competent evidence in any prosecution under this act against the person making the same, and whenever such reports, received in evidence upon the trial, show that during a period of one month or more the person on trial and charged with a violation of this act, alleged to have been committed on a certain date within said period, has had or permitted an average percentage of overrun in excess of 24 per cent in the butter manufactured by him during said period, such showing shall be prima facie evidence of a violation of this act by the person so charged, committed as of the date alleged. ('27, c. 162, § 4)

3822. Renovated butter—No person shall sell any butter made by taking original packing stock, or other butter, or both, and malting the same and drawing off, or extracting butterfat and mixing such fat with skimmed milk or cream, or other milk product and rechurning or reworking such mixture; or any butter product produced by any process, commonly known as boiled process or renovated butter, unless the words "Renovated Butter" shall be plainly branded with bold-face letters, at least three-fourths of an inch in height, on the top and sides of each receptacle, package, or wrapper in which it is kept for sale or sold. And if such butter is exposed for sale uncovered or not in a receptacle, package or wrapper, then a placard containing the words "Renovated Butter" printed in style and manner as aforesaid shall be attached to the mass of butter in such manner as to be easily seen and read by purchasers. ('21 c. 495 § 33)

3823. Process butter—No person shall sell any butter made of part cream and part casein and other ingredients by what is known as the "Quinness Patent" or process, or that made by other similar process, whereby the casein of milk and other ingredients are made to imitate or resemble genuine butter made from cream, unless each package or receptacle in which the same is kept for sale or sold shall be stamped or marked "patent butter" on the top and sides thereof, with lamp black and oil, in letters at least one-fourth of an inch wide, and one-half of an inch high; and in addition to such marking the seller at the time of the sale shall give to the purchaser a printed card, stating

distinctly and correctly the different ingredients contained in said compound. ('21 c. 495 § 34)

3824. Dairy products—Preservatives—No person shall manufacture for sale, advertise or sell any mixture or compound designed, or offered for sale or use, as an adulterant, preservative or renovator of milk, cream, butter or cheese; or as a neutralizer of the acidity of milk, cream, butter or cheese; nor shall any person add or apply to milk, cream, butter or cheese, any borax, boric acid, salicylic acid, formaldehyde, formalin, or other antiferment or preservative, nor any alcohol, viscogen, lime, saltpeter, sal-soda, soda ash or other neutralizer; provided, however, that this section shall not apply to pure salt added to butter or cheese. ('21 c. 495 § 35)

3825. Protection of meat—Every dealer in meats, fish, fowl, or game for human food, at the place of offering or exposing for sale, and in the transportation of such food from place to place to customers, shall protect the same from dust, flies and other vermin or substance which may injuriously affect it, by securely covering it while being so offered or exposed for sale or transported. Every violation of the foregoing provision shall be a misdemeanor. ('21 c. 495 § 36)

3826. Veal—No person shall sell, offer or expose for sale, or have in possession with intent to sell, the veal of calves killed when less than four weeks old. Any person violating any of the provisions of this section shall be guilty of a misdemeanor and shall be fined not less than fifty dollars or by imprisonment for not less than sixty days. ('21 c. 495 § 37)

3827. Ice cream—For the purposes of this act, ice cream is defined as a frozen product made from cream and sugar with or without a natural flavoring and containing not less than twelve per cent by weight of butterfat; fruit ice cream is defined as a frozen product made from cream, sugar, and sound, clean, mature fruits, and containing not less than ten per cent by weight of butterfat; and nut ice cream is a frozen product made from cream, sugar and sound, non-rancid nuts and containing not less than ten per cent by weight of butterfat. It shall be unlawful for any person to manufacture, sell, transport, offer for sale, use or transportation, or have in possession with intent to sell or transport, ice cream containing less than twelve per cent by weight of butterfat, or fruit ice cream containing less than ten per cent by weight of butterfat, or nut ice cream containing less than ten per cent by weight of butterfat. ('21 c. 495 § 38)

3828. Pasteurized milk and cream—Any creamery equipped with machinery and appliances for pasteurizing the milk and cream which it receives, may apply to the state dairy and food commissioner for an inspection by him of such machinery and appliances; and upon such application made showing such fact and the wish of the creamery to use such process in the manufacture of butter, the state dairy and food commissioner shall cause such inspection to be made.

If such machinery and appliances are sufficient for effective use in so pasteurizing the milk and cream received, the said dairy and food commissioner may issue a certificate to such creamery, authorizing it so long as it shall keep such machinery and appliances in use and shall pasteurize such milk and cream at a minimum temperature of 145 degrees Fahrenheit for not less than thirty minutes, or at a minimum temperature of 180 degrees Fahrenheit for continuous flow pasteurization, to label its products "This product is from pasteurized milk and cream," and such creamery

may label its products, so long as it continues to so pasteurize all its milk and cream used in the manufacture of such product. Labeling contrary to this section shall be a misdemeanor. ('21 c. 495 § 39)

3829. License for testing apparatus—No person shall operate a milk or cream testing apparatus to determine the percentage of butterfat in milk or cream for the purpose of purchasing the same either for himself or another without first securing a license from the dairy and food commissioner of this state, or from one of his duly appointed assistants, or inspectors, authorizing such person to so operate such tester. ('21 c. 495 § 40)

3830. Application for license—Nonresidents—Any person desiring to secure such license shall make application therefor on a blank to be prepared and provided by the dairy and food commissioner, and such applicant, before such license may be issued, shall pass a satisfactory examination in person and prove by actual demonstration that he is competent and qualified to properly use such tester and make an accurate test with the same. Provided, however, that no person who is not a resident of the United States shall be licensed under the provisions of this act. ('21, c. 495, § 41; amended '25, c. 164)

3831. License fee and term—Such license shall be issued for a period ending on the thirty-first day of December following, and a fee of \$1.00 shall be paid for such license by the licensee upon the issuance thereof.

The testing of each lot of milk or cream by any unlicensed person shall constitute a separate offense except in case such unlicensed person shall have valid reasons to appoint a substitute for a period of not to exceed three days, subject to the approval of the dairy and food commissioner. ('21 c. 495 § 42)

3832. Sanitary food law—No person, firm or corporation shall operate any bakery, confectionery, creamery, dairy, dairy barn, milk depot, laboratory, hotel, restaurant, cafe, dining room or eating house, fruit box, or receptacle, fruit stand or vehicle of any kind, packing or slaughter house, ice cream plant or any place where any fruit or food products are manufactured, packed, stored, deposited, collected, prepared, produced or served for the purpose of sale or profit, or sold for any purpose whatever, if the same is in a filthy, unclean or unsanitary condition, or is permitted to be in a filthy, unclean or unsanitary condition. ('21 c. 495 § 43)

3833. Removal of insanitary conditions—If, in the opinion of the state dairy and food commissioner, his assistants, inspectors or agents, or either of them, after an investigation thereof, any bakery, confectionery, creamery, dairy, dairy barn, milk depot, laboratory, hotel, restaurant, cafe, dining room, or eating house, fruit box, receptacle, fruit stand or vehicle of any kind, packing or slaughter house, ice cream plant, or any place where any fruit or any food products are manufactured, packed, stored, deposited, collected, prepared, produced, served or sold for any purpose whatever, is operated in violation of section 43 of this act, the dairy and food commissioner, his assistants, inspectors, or agents shall notify in writing the proprietor or proprietors, owner or owners, manager or managers of such bakery, confectionery, creamery, dairy, dairy barn, milk depot, laboratory, hotel, restaurant, cafe, dining room or eating house, fruit box or receptacle, fruit stand or vehicle of any kind, packing or slaughter house, ice cream plant, or any place where any fruit or any food products are manufactured, packed, stored, deposited, collected, prepared, produced,

served, or sold for any purpose whatever, to place the same in a clean and sanitary condition within a reasonable time to be stated in said notice, which time so stated shall in no case be less than two days, and failure to comply with such notice within the time so stated shall be deemed a violation of the provisions of this act. ('21 c. 495 § 44)

3834. Employment of diseased person—It shall be unlawful for any person to work in or about any place where any fruit or any food products are manufactured, packed, stored, deposited, collected, prepared, produced or sold, any person or persons whose condition is such that disease may be spread to his associates direct, or through the medium of milk, cream, butter, other food or food products, likely to be eaten without being cooked after handling, whether such condition be due to a contagious, infectious, or venereal disease, in its active or convalescent stages, or to the presence of disease germs, whether accompanied by, or without, any symptoms of the disease itself.

It shall be the duty of the State Dairy and Food Commissioner, his assistants, inspectors or agents, to report to the State Board of Health for investigation, any person suspected to be dangerous to the public health as provided for in this Section, and immediately to exclude such person from such employment pending investigation and during the period of infectiousness, if such person is certified by the State Board of Health or its authorized agent, to be dangerous to the public health. ('21 c. 495 § 45)

3835. Commercial canneries—Supervision and regulation by commissioner—Inspection—Sanitary conditions—All commercial vegetable and fruit canneries, located within this state, shall be under the supervision and regulation of the commissioner. For the purpose of this act, a commercial cannery is defined to be a place or buildings where vegetables and/or fruits are packed in hermetically sealed cans, where sterilization by heat is used, and the products placed on the market for general consumption as human food: but shall not include private homes where farmers and/or others or state or county institutions may pack or preserve vegetables and/or fruits for their own use and make occasional sales of the surplus thereof. At such times as the commissioner may deem proper, he shall cause to be inspected all commercial canneries where vegetables and/or fruits are packed and/or preserved, and shall require the correction of all insanitary conditions or practices found therein, and may search and enter all cupboards, closets, or any other places in such canneries for the purpose of discovering any chemical preservative or adulterants which he has reason to believe are used or intended to be used in the canning or preserving of vegetables and/or fruits, and for enforcing the provisions of this act. ('21, c. 495, § 46; amended '27, c. 177, § 1)

3836. Reports—Information furnished—The dairy and food commissioner shall issue public bulletins of information, report and publish the conditions found in canning factories, furnish and disseminate information regarding the canning industry, and for that purpose may arrange for educational exhibits and demonstrations, public meetings, and give instructions to processors and superintendents of canneries; such information shall be available to any person who is a resident of this state, or those now engaged in the business of canning and to those who may hereafter engage therein who may properly apply therefor. ('21 c. 495 § 47)

3837. Licenses for operation of commercial canneries—No person shall operate a commercial cannery

without having a license therefor from the commissioner, as hereinafter provided. Such license shall be granted under such reasonable rules and regulations as the commissioner may prescribe. Upon filing application for a license the commissioner shall issue a temporary permit, to be in effect only until a license shall have been issued or until the applicant shall have been notified of the denial of such application. Upon the filing of such application the commissioner shall cause an investigation to be made of the conditions of such cannery, for the purpose of determining whether or not a license should be granted. The application shall be in the form prescribed by the commissioner and shall give such information as he may require. Each application shall be accompanied by a license fee of one dollar. All licenses shall expire on the 31st day of December, next following the date of issue but may be renewed without inspection; on or before the first day of May of each year, upon application and payment of the license fee. The commissioner after reasonable notice and opportunity to be heard may by order revoke any license when the licensee fails to comply with any of the provisions of the Minnesota Dairy and Food Law, or any rule or regulation promulgated, issued and published by the commissioner relating to the operation of commercial canneries; and he may reinstate any license when the licensee has fully complied with all the provisions of said law, rules and regulations. ('21, c. 495, § 48; amended '27, c. 177, § 2)

3838. Inspector of canneries—The dairy and food commissioner shall appoint and assign, upon the passage of this act, an efficient and experienced food inspector who has passed required examinations, national or state, and who has a thorough knowledge of the canning business, either as processor, superintendent or as an inspector of food manufacturing factories, whose duties it shall be, in addition to his general work as food inspector, to have this inspection of canneries in charge, as required in this act; to visit and inspect canneries, as often as may be required, superintend the work of and instruct inspectors stationed at canneries and make reports thereof to the commissioner. The commissioner may allow the person appointed as such inspector, a sum of not to exceed \$600.00 annually as additional compensation for his services, and may whenever he in his judgment deems it proper for the good of the canning industry, arrange for annual scoring prize contests, on products of Minnesota canneries and for such purpose expend not to exceed \$200.00 annually. ('21 c. 495 § 49)

3839. Inspectors at commercial canneries—The commissioner shall, whenever he deems it necessary, furnish efficient inspectors at canneries while in operation, whose duties shall be to see that the canneries where assigned shall at all times comply with all food laws, national and state and all sanitary laws, rules and regulations; to superintend and see that nothing but proper raw materials, articles or substances are used with the necessary sterilization by heat in the packing and preservation of food. The commissioner, his inspector in charge of canneries or any local inspector assigned at such canneries shall be the judge of the quality of any raw material, articles or other substances used in canning, packing or preserving vegetables and/or fruits, and may, whenever they deem it necessary, condemn any such raw materials, articles or substances, as being unfit for use in the packing, canning or preservation of foods. ('21, c. 495, § 50; amended '27, c. 177, § 3)

3840. Rules and regulations for canneries—Any and all power and authority in this act conferred upon the commissioner shall be applicable for the purpose of prescribing rules and regulations for the operation of canneries, and proper labels, standards and definitions of grades on products of canneries. ('21 c. 495 § 51)

3841. Notice of intention to operate—Any person owning or operating a canning factory shall, by written notice on or before June 1st of each year, notify the commissioner whether or not such factory is to be operated during that season or year, giving kinds and varieties of products to be canned or manufactured that season. At least ten days prior to the beginning of operation of any canning factory, the commissioner shall be notified in writing of such intended operation. On or before November 15 of each year the owner, manager or superintendent of such factory shall furnish the commissioner, his agent, or inspector with a report giving such information concerning the factory as the commissioner may require. ('21 c. 495 § 52)

3842. Certificates of inspection of commercial canneries—Labels and brands—The commissioner shall furnish to each commercial cannery that shall have fully complied with the provisions of this act, a certificate of inspection that such cannery has been inspected and has complied with all laws, rules and regulations applying thereto. The commissioner may authorize the proprietor of such cannery to use the following or similar label or brand on his products: "Packed under regulations of, and in cannery inspected by Minnesota Dairy and Food Department" or such other label, trademark, device, brand or guarantee certificate, as the commissioner may designate or adopt. ('21, c. 495, § 53; amended '27, c. 177, § 4)

3843. Assessments on commercial canneries for inspections and services—Commercial canneries inspection account—Penalty for non-payment—The commissioner is hereby authorized and directed to collect from each commercial cannery, as herein defined, an assessment for inspection and services furnished, and for maintaining a bacteriological laboratory and employing a bacteriologist and such assistants as he may deem necessary, and a sufficient number of special inspectors to be assigned to canneries. The assessment to be made on each commercial cannery, for each and every packing season, shall not exceed one-half cent per case on all foods packed, canned or preserved therein, nor shall the assessment in any one calendar year to any one cannery exceed \$1,000. The commissioner may, whenever he deems it advisable, graduate and reduce the assessment to such sum as is required to furnish the inspection and laboratory services rendered. The assessment made and the sums so collected shall be deposited in the State Treasury, as other departmental receipts are deposited, but shall constitute a separate account to be known as the "Commercial Canneries Inspection Account," which is hereby created, and together with moneys now remaining in said account, is hereby set aside and appropriated as a revolving fund, to meet the expense of special inspection, laboratory and other services rendered, as herein provided. The amount of such assessment shall be due and payable on or before December 31, of each year and shall bear interest after that date at the rate of 7 per cent per annum, and if not paid on or before January 15, following, a penalty of 10 per cent on the amount of the assessment shall also be added and collected. ('21, c. 495, § 54; amended '27, c. 177, § 5)

3844. Violations of law in regard to commercial canneries—Penalty—Whoever shall, without permission of the commissioner, use any brand, label or device authorized by the commissioner, or who shall fail to furnish reports containing information required or within the time specified, or who shall fail to obey any lawful direction of the commissioner given by him in carrying out the provisions of this act, or shall use any raw materials, articles or substances, forbidden to be used in canning, packing or preserving vegetables and/or fruits, or shall violate or fail to comply with any of the provisions of this act or the rules or regulations made hereunder, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than \$25 nor more than \$100 or by imprisonment for not less than 30 days nor more than three months for each offense. ('21, c. 495, § 55; amended '23, c. 379, § 1; '25, c. 385, § 1; '27, c. 177, § 6)

3845. Butter and cheese brands—Any person manufacturing butter in the State of Minnesota may use the stamp, brand or label hereinafter provided when authorized by the dairy and food commissioner. ('23 c. 172 § 1)

Explanatory note—Sections 56, 57, 58, 59, 60, 61, 62 and 63 of Laws 1921, c. 495 were repealed by Laws 1923, c. 172, § 1, and other sections having the same numbers were enacted in lieu thereof by said Laws 1923, c. 172, except §§ 62, 63. See § 3848.

3846. Minnesota brands—The dairy and food commissioner may authorize the use of the following stamp, brand or label for butter manufactured in the State of Minnesota. Such stamp, brand or label shall have the design and shall be of such size as the dairy and food commissioner shall adopt and designate, and shall contain the following words: "Minnesota Fancy Creamery Butter, 92 points. If not up to grade, notify Minnesota Dairy & Food Commission. No. ——— (Insert factory Number)" ('23 c. 172 § 1)

3847. Minnesota butter brands—Use of authorized, when—The commissioner may authorize the use of such stamp, brand or label only by such persons manufacturing butter who comply with the following rules:

(a) Cream must be received from all patrons at least three times per week from the 1st day of May up to and including the 30th day of September in each year, and not less than two times per week from the 1st day of October to and including April 30th thereafter.

(b) Cream must be delivered in good condition, in individual producer's cans, and when delivered must not show an acid-test above 3/10 of 1%.

(c) After such cream has been delivered to the creamery or factory it shall be pasteurized at a temperature of at least 145 degrees Fahrenheit, vat pasteurization for at least thirty minutes, and in the flash system pasteurization at a temperature of at least 180 degrees Fahrenheit.

(d) Butter made from such cream at such factory or creamery shall score at least 92% at the time of manufacture and within 15 days thereafter. ('23, c. 172, § 1; amended '25, c. 49, § 1)

3848. Application for license to use Minnesota butter brands—Fees—Samples of butter for examination—Any person desiring to use the stamp, brand or label described in this act, in the manufacture or sale of butter shall make written application for a license therefor to the commissioner which application shall describe the creamery or factory by location and name in which such butter is to be manufactured, and give such other information as the commissioner may re-

quire. A license may be granted by such commissioner to such person to use such stamp, brand or label at the creamery or factory described in the application, if the commissioner shall find, on investigation, that all the provisions of law have been complied with. Such license shall state that the stamp, brand or label provided for in this act may be used in connection with the manufacture or sale of butter from the creamery or factory described in such license. Such creamery or factory so described shall be given the same number as the serial number of the license.

No person shall use, in the manufacture or sale of butter, such stamp, brand or label without first having obtained a license therefor. Such license so granted may be revoked by the commissioner if any of the provisions of this act are not complied with. All licenses shall be numbered in serial order. All applications for license shall be accompanied by a fee of five dollars, which fee shall be returned to the applicant in the event no license is granted.

The commissioner may require any person to whom any such license may be granted to furnish from time to time for examination, samples of butter manufactured in any factory described in the license. ('23, c. 172, § 1; amended '25, c. 49, § 2)

3849. Complaint—Investigations—Licenses revoked—Whenever complaint is made in writing to the dairy and food commissioner as to the quality of any butter sold bearing the stamp, brand or label described in this act, the dairy and food commissioner shall upon receipt of such complaint immediately make investigation, and if such persons licensed to use such stamp, brand or label have not complied with, or refuses to comply with, the rules and regulations of the dairy and food commissioner and with the laws relative thereto and if such butter is found to be of an inferior quality to that prescribed by such laws, rules and regulations, the license to use such official stamp, brand or label shall be revoked and such official stamp, branch or label shall be surrendered to and taken by dairy and food commissioner. ('23 c. 172 § 1)

3850. Violation and penalties—Any person, firm, corporation or co-partnership who shall use the official stamp, brand or label mentioned in this act or any similar stamp, brand or label on any package of manufactured butter without first having obtained a license therefor from the state dairy and food commissioner shall be guilty of a gross misdemeanor. ('23 c. 172 § 1)

3851. Manufacture of oleomargarine—No person shall produce or manufacture out of or from any animal fats or vegetable oils not produced from unadulterated milk or cream from the same, the article known as oleomargarine or any article or product in imitation or semblance of natural butter produced from pure unadulterated milk or cream of the same; or mix, compound with or add to milk, cream or butter any acids or other deleterious substances or any animal or vegetable oils not produced from milk or cream, so as to produce any article or substance or any human food in imitation or in semblance of natural butter, nor sell, keep for sale, or offer for sale any article, substance or compound, made, manufactured or produced in violation of the provisions of this section, whether such article, substance or compound shall be made or produced in this state or elsewhere. Any person manufacturing, selling, offering or exposing for sale any commodity or substance in imitation or semblance of butter, the product of the dairy, shall be deemed guilty of a violation of this section, whether he sells

such commodity or substance as butter, oleomargarine or under any other name or designation whatsoever and irrespective of any representations he may make relative to such commodity or substance. ('21 c. 495 § 64)

3852. Sale, etc., of oleomargarine, with intent to deceive—No person shall manufacture, sell, ship, consign, offer for sale, expose for sale, or have in possession with intent to sell, oleomargarine which shall be manufactured in imitation of, or in semblance of butter of any shade of yellow, with an intent to deceive or defraud the consumer or purchaser thereof.

If, in the manufacture of any oleomargarine, fats, oils, or other ingredients are selected and used in such proportions as to cause the oleomargarine so manufactured to resemble butter of any shade of yellow, such fats shall be prima facie evidence in any prosecution under this section that such oleomargarine was manufactured with an intent to deceive or defraud the consumer or purchaser thereof. ('21 c. 495 § 65)

3853. Oleomargarine, labeling of—It shall be unlawful for any person to manufacture, sell, ship, consign, offer for sale, expose for sale, or have in possession with intent to sell, oleomargarine made wholly or partly out of fats, oils or oleaginous substances or compound thereof unless each receptacle and package in which the same is kept for sale or sold has securely affixed upon the side thereof, a white or light colored label which shall be printed in the English language with black ink in type not smaller than 36-point bold-faced gothic capitals the word "oleomargarine" and immediately thereafter under the same label in the same colors there shall be printed in the English language, in 8-point bold-faced gothic capitals, the name and, with substantial accuracy, the percentage of each ingredient contained in such oleomargarine, giving the name of each animal or vegetable from which such fats or oils are derived. ('21 c. 495 § 66)

3854. Labeling—It shall be unlawful for any person to sell or offer or expose for sale, or have in possession with intent to sell, any oleomargarine which is not marked and distinguished on the outside of each tub, package, or parcel, thereof in a conspicuous place, by a placard with the word "oleomargarine" printed in English thereon; such placard to be placed in a conspicuous position in full view of the purchaser; and the said word "oleomargarine" on such placard shall be printed in plain uncondensed gothic letters, each letter not less than one inch in height, and such placard shall contain no other words thereon; and there shall also be displayed upon each tub, package or parcel containing such oleomargarine in the same manner and in a conspicuous position, a placard with the word "oleomargarine" printed thereon in the same form as above described in this section; and when oleomargarine is sold from such package or tub, or otherwise at retail, in print, roll, or other form, before being delivered to the purchaser, it shall be wrapped in wrappers plainly stamped on the outside thereof with the word "oleomargarine" printed or stamped thereon in English in letters one-fourth inch square; and said wrapper shall also contain the name and address of the seller and the quantity sold, and immediately following there shall appear upon the wrapper the name and address of the manufacturer.

Descriptive matter upon the label shall be free from any statement, design or device that is in itself misleading or that conveys or tends to convey information that the product is derived from other than the ingredients of which it is composed; and it shall be un-

lawful to label oleomargarine "dairy rolls" "country rolls," "Guernsey," "Jersey," "Holstein" or other labeling that would indicate that said product is of dairy or creamery origin.

The use of any false or misleading statement, design, or device shall not be justified by any statement given as the opinion of an expert or other person appearing on the label, nor by any descriptive matter explaining the use of the false or misleading statement, design or device. ('21 c. 495 § 67)

3855. Oleomargarine—Serving as butter—It shall be unlawful for the proprietor of any hotel, dining room, dining car, drinking place, cafe, bakery, boat, lumber camp, mining camp, railroad camp, boarding house, or hospital, or any place where guests, boarders or patients are served with food for pay, or for any managing agent or servant of such proprietor, to serve as or for butter, or as a substitute thereof, any oleaginous substance or compound other than that produced wholly from pure, unadulterated milk or cream, unless he or they shall cause to be plainly printed in English upon every bill of fare, if one be used, and in letters not smaller than eight-point bold faced gothic capitals, the words "oleomargarine used in place of butter" and in case no bill of fare be used, the manager or person in charge of such establishment shall cause to be posted upon each side of the dining car or eating room, in a conspicuous position and in letters large enough to be distinctly seen and read from all parts of said room, placards containing on the face thereof the words in the English language "oleomargarine used in place of butter," and such person shall keep said placards continuously posted as aforesaid as long as such butter substitute be kept or used. ('21 c. 495 § 68)

3856. Cold storage eggs to be labeled—No person shall sell, agree to sell, or advertise for sale any cold storage eggs without making it known to the purchaser or prospective purchaser that the eggs are cold storage eggs, and all boxes or other receptacles in which cold storage eggs are sold or delivered at wholesale or retail, shall be stamped in a conspicuous manner with the words "cold storage eggs." ('21 c. 495 § 69)

3857. Sale, etc., of eggs unfit for human food—No person shall sell, offer or expose for sale, or have in his possession, or traffic in, any egg unfit for human food, unless the same is broken in shell and then denatured so that it cannot be used for human food. For the purpose of this act, an egg shall be deemed unfit for human food if it be added or mouldy, a black rot, a white rot, or a blood ring; or if it has an adherent yolk, or a bloody or green white; or if it be incubated beyond the blood ring stage; or if it consists in whole or in part of a filthy, decomposed or putrid substance. ('21 c. 495 § 70)

3858. Eggs, dockage of—Candling—Reports—No person, firm or corporation shall, in buying or selling eggs, take or give a greater or less dockage for eggs unfit for food as defined in section 70 of this act than the actual dockage which has been determined by the careful candling of the eggs so purchased or sold, and he shall keep such candling records as may be required by the rules and regulations of the dairy and food commissioner. All such records shall be open at all reasonable times for examination by the dairy and food commissioner, or his assistants, agents, inspectors or employes. Every person engaged in the business of buying eggs for exchange or consignment in this state, shall, within ten days after receipt of any shipment or consignment of eggs, render a detailed and accurate

statement to the person by whom such shipment or consignment of eggs was shipped or consigned. The return statement shall truthfully and accurately classify the grade of eggs received according to the general commercial standard and shall include the following information: The number of cases of eggs received, the number of No. 1 eggs, the number of No. 2's, or seconds, the number of cracked, the number of leakers, and the number of rots, as defined in section 70 of this act. The term "candling" as used herein shall be construed to mean the careful examination, in a partially dark room or place of the whole egg by means of a strong light, the apparatus and method employed to be such as shall be approved by the dairy and food commissioner. Every person engaged in the business of buying eggs in this state for resale or consignment shall provide and maintain an adequate place for the accurate candling of eggs which are intended to be used for human food. ('21 c. 495 § 71)

3859. Eggs—Candling certificate—There shall be placed on the top layer under the top flap of every case of candled eggs, by the person candling the same a candling certificate. Such candling certificate shall be printed on cards or sheets of paper not smaller in size than 2½ by 4¼ inches and shall give the date of candling the eggs contained in the case in which it is placed, the name, initials or number of the person candling the eggs, and the name of this state and the license number of the person for whom the eggs were candled. ('21 c. 495 § 72)

3860. Eggs—License for selling—No person shall engage in the business of buying, selling, dealing in or trading in eggs, except those retailers who do not buy direct from the producers and who do not sell in lots greater than one case, without first obtaining from the dairy and food commissioner a license to conduct such business. Such officer upon receipt of a proper application upon forms such as he may prescribe, accompanied by an annual license fee of \$1.00, shall thereupon issue to such person an annual license to engage in such business. Each license shall expire on the first day of March next after its issue.

The dairy and food commissioner shall determine the conditions under which eggs previously candled shall be recandled before sale in order to safeguard the purchaser against buying as a part of a lot, eggs unfit for human food. ('21 c. 495 § 73)

3861. Civil service—Office of dairy and food commissioner—Before any person shall be eligible to appointment as an inspector in the dairy and food department, except special inspectors to be stationed at canneries while operating, he shall be required to pass a competitive examination touching his general qualifications and proficiency and such general knowledge of the trade and technical phases of the work required in such position as may be deemed necessary by a board of examiners to the proper discharge of the duties of such position. And no person shall be eligible to such appointment unless in addition to the examination requirements herein specified, he shall satisfy the board as to his moral, mental and physical fitness to hold such position. All applicants must be citizens of the United States and must have resided in the state of Minnesota at least one year before receiving an appointment under the provisions of this act. All appointments and removals under the provisions of this act shall be made by the officer now authorized by law to make such appointments and removals. In case of the removal of any such inspector, a statement in writing giving the reasons for such re-

moval shall be filed by the person making such removal with the secretary of state, which shall be open to public inspection, but the inspector against whom such statement has been filed shall, on written request, be given a hearing before the board of examiners within fifteen days from the filing of such request. The failure to make and file such statement within five days after such removal shall operate to reinstate such official or employe. No removal of any inspector shall be made except for neglect of duty, incompetence, insubordination or immorality. ('21 c. 495 § 74)

Appointment of dairy and food and oil inspectors, see § 53-38, herein.

3862. Civil service—Board of examiners—To carry out the provisions of the preceding section of this act, a board of examiners is hereby created consisting of the state dairy and food commissioner, the dean of the agricultural college and the attorney general. In case of death or inability to act as one of three persons herein designated, the governor of the state shall appoint some person temporarily to act in his place. The state dairy and food commissioner shall be secretary of such board and shall keep all the records which shall contain all the proceedings of the board in reference to examinations and of its actions in carrying out the provisions of this act. The secretary of the board shall likewise keep and have open to the inspection of the public, a list of the names of the persons who are eligible to appointment. Two members of the board shall constitute a quorum for the transaction of business. A chairman shall be elected by the board from its number. None of the members of the board shall receive any compensation for their services herein required, except their reasonable and necessary expenses, which shall be paid out of the fund appropriated for the maintenance of the state dairy and food department in the same manner as other charges against such fund are paid. ('21 c. 495 § 75)

3863. Civil service—Duty of board of examiners—The board of examiners shall provide for such examinations, suitable lists of questions, which shall be submitted to the applicants in such manner as the board may determine; and a list shall be made of the successful applicants, and from which list the state dairy and food commissioner shall make selections for the positions above named. ('21 c. 495 § 76)

3864. Examiners—The board of examiners shall convene for the purpose of holding the first examination the second Monday in January, 1921, and annually thereafter. Special examinations may be called by the board upon written request of the commissioner, provided that, except for extraordinary reasons, it shall not be necessary to call special examinations if there be a sufficient number of eligibles remaining from previous examinations. Any person who shall pass such examination shall be eligible to appointment at any time within one year from the date of his examination, provided he shall remain morally, mentally and physically fit. Thirty days' notice, signed by the secretary of the board, of any examination held hereunder shall be given by one publication in two St. Paul daily newspapers of opposite political faith, such notice to state the time and place thereof and in general terms the subject matter upon which applicants will be examined. All examinations shall be held in the city of St. Paul at some suitable place therein to be fixed by the board. If more applicants than are necessary to fill vacancies shall have passed such examination, or series of examinations, the commissioner shall have authority to select from such entire list, but without

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reference to any political affiliation or belief, those persons who in his judgment are best fitted to perform the duties of the position; and if at any time there be an insufficient number of eligibles, the commissioner shall have authority to temporarily fill a vacancy, such appointment to hold until such list of eligibles has been sufficiently replenished. ('21 c. 495 § 77)

3865. Construction of act—This act is intended to be a restatement of existing laws, with such changes as appear, and its provisions, so far as they are the same as those of existing statutes, shall be construed as continuations thereof, and not as new enactments. Any of the provisions of this act inconsistent with the existing code of criminal procedure or penal law shall be effective for the purposes of this act only. ('21 c. 495 § 78)

3866. Provisions severable—The provisions of this act, and each part thereof, and its sections and each part thereof, are independent and severable, and if any provisions or part thereof, or section or part thereof, be held unconstitutional or invalid, no other provision or part thereof or section or part thereof shall thereby be impaired or rendered unconstitutional or invalid. ('21 c. 495 § 79)

3867. Not to affect the feeding stuff control law—Nothing in this act shall be construed to change, modify, amend, or in any manner affect any of the provisions of chapter 260, Session Laws 1919, approved April 15, 1919, entitled: "An act to prevent fraud and deception in the manufacture and sale of concentrated commercial feeding stuffs and providing for registration and labeling thereof and repealing chapter 383, General Laws of Minnesota 1907, and all other acts or parts of acts inconsistent herewith." And said chapter 260, Session Laws 1919, shall continue in full force and effect. ('21 c. 495 § 80)

Explanatory note—For Laws 1919, c. 260, see § 3874 to 3885, herein.

Laws 1907, c. 383, was repealed. See § 3885, herein.

3868. Certain other laws not repealed—Nothing in this act shall be construed to affect or repeal Session Laws 1901, Chapter 117, being R. L. 1905, Section 4993, Session Laws 1895, Chapters 200, 201, being R. L. 1905, Sections 4994, 4995, nor Sessions Laws 1905, Chapter 323, nor Session Laws 1915, Chapter 335. ('21 c. 495 § 81)

3869. Implied repeals—Saving clause—Save as aforesaid, all acts and parts of acts inconsistent with the provisions of this act and not herein expressly repealed, are hereby repealed. ('21 c. 495 § 82)

3870. Repeals—The said laws hereafter enumerated shall be expressly repealed from and after the taking effect of this act.

Session Laws 1905, Chapters 158 and 300.

Revised Laws 1905, sections 1734 to 1771, both inclusive, and sections 1774 to 1780, both inclusive.

Session Laws 1907, chapters 124, 237, 337, 384 and 424.

Session Laws 1909, chapters 353, 428 and 498.

Session Laws 1911, chapters 183, 213 and 310.

Session Laws 1913, chapters 47, 97, 229, 336, 366 and 475.

Session Laws 1915, chapters 18 and 368.

Session Laws 1919, chapters 316, 351, 352, 353 and 495.

Extra Session Laws 1919, chapter 16.

Nothing herein shall be construed as a legislative declaration that any law so enumerated has not heretofore been expressly or impliedly repealed. ('21 c. 495 § 83)

3871. Definitions—Evidence of intent—The word "person" as used in this act shall be construed to import both the plural and the singular, as the case demands, and shall include corporations, co-partnerships, companies, societies and associations. The word "men" shall include "women." No person who shall commit or assist in committing any offense herein defined shall be exempt from conviction and punishment therefor for the reason that he acted as the agent, employe, or representative of another. When construing and enforcing the provisions of this act, the act, omission or failure of any officer, agent or other person acting for or employed by any corporation, co-partnership, company, society or association, within the scope of his employment or office, shall in every case be also deemed to be the act, omission or failure of such corporation, co-partnership, company, society or association, as well as that of the person.

The words "sell" and "sale" as used herein shall be construed as including the keeping, offering or exposing for sale, use, transportation or exchange of the restricted, regulated or prohibited article, the having of any such article in possession with intent to sell, use, transport or exchange the same, and the storing, carrying or handling thereof in aid of traffic therein, whether done or permitted in person or through others. The having in possession of any article, the manufacture, sale, use or transportation of which is restricted, regulated or forbidden by this act, shall be deemed prima facie evidence of intent to sell, manufacture, transport or use the same in violation of law. ('21 c. 495 § 84)

3872. Tenure of office preserved—Whoever, when this act takes effect, holds an office under any of the laws thereby repealed, shall continue to hold it according to the tenure thereof, unless it is abolished or unless a different provision relative thereto is made by this act. ('21 c. 495 § 85.)

3873. Effect of repeal—Whenever a law is repealed by this act, which repealed a former law, the former law shall not thereby be revived, unless it is so specially provided; nor shall such repeal affect any right accrued, any duty imposed, any penalty incurred, or any proceeding commenced or to be commenced, under or by virtue of the law repealed. ('21 c. 495 § 86)

3873-1. Records and reports of persons purchasing, manufacturing or selling dairy products, and owners of skimming stations or places engaged in business of purchasing milk or cream, and operators of condenseries, creameries, milk factories and cheese factories—Person defined—The word "person" as used in this act shall mean persons, firms, corporations, co-partnerships and associations. ('27, c. 169, § 1)

3873-2. Same—Records required—Contents—Every person engaged in the purchase, manufacture or sale of dairy products, and all owners of skimming stations or other places engaged in the business of purchasing milk or cream, and operators of condenseries, creameries, milk factories and cheese factories, shall keep in proper books true and full records of all milk, cream, butterfat and other dairy products purchased, received, shipped, stored or handled by them, the amounts paid therefor the names of patrons, as well as the amounts received for butter sold, the number of pounds of butter shipped out of the state and the names of persons to whom shipped, the pounds of butter sold within the state, the total pounds of butter or cheese manufactured, the total pounds of butterfat, the net price received for all butter sold, the cost per pound for making butter or cheese, the amount of overrun of butter manufactured from butterfat and

cream, the average test of cream and of milk and butterfat handled, and the operating expense of such person, owner or operator, including the salaries of employees, boards of directors and others. ('27, c. 169, § 2)

3873-3. Same—Reports required—Contents—Every such person, owner or operator shall on or before the first day of March in each year and at such other times as the dairy and food commissioner, hereinafter called the commissioner, may fix or require, render to the commissioner on blank forms prepared by him, itemized and verified reports of all business transacted by him as set out in Section 2 hereof during the preceding calendar year. Such reports shall state the name of the creamery or other business engaged in within the requirements of this act, the village or city and county in which the same is located, the number of patrons, the receipts for butter sold, the number of pounds of butter shipped out of the state and the names of the persons to whom shipped, the number of pounds of butter sold in the state, the total pounds of butter manufactured, the net price received for all butter sold, the cost per pound for making butter, the overrun of butter manufactured over the number of pounds of butterfat handled, purchased or used in the manufacture of butter, the average test of cream and butterfat and of milk, the amount paid patrons for butterfat, the amount of expenses and salaries paid during the year, the name of the butter maker or person in charge of such business, and the name of the president and secretary, if the business is conducted by any one except an individual; such reports shall also contain such further information as from time to time may be required by the commissioner, and a duplicate copy thereof shall be retained by such persons, owner or operator in his files, which shall be subject to examination by the commissioner at any time. ('27, c. 169, § 3)

3873-4. Same—Inspection of books and records of persons, etc.—The books and records of all persons, owners and operators coming within the provisions of Section 2 of this act shall be open for the inspection of the commissioner and his deputies or employes at all times, who shall make such examination thereof as is desired or deemed necessary by the commissioner. ('27, c. 169, § 4)

3873-5. Same—Failure to keep records or make reports—Penalty—Any person violating any of the provisions of this act shall be guilty of a misdemeanor. ('27, c. 169, § 5)

MISCELLANEOUS

ANIMAL FEED

3874. Statement of concentrated feeding stuff to be filed with dairy and food commissioner—That before any concentrated commercial feeding stuff is sold, offered or exposed for sale in Minnesota, the manufacturer, importer, dealer, agent or person who causes it to be sold or offered for sale, by sample or otherwise, within this state, shall file with the dairy and food commissioner of the state of Minnesota, a statement that such manufacturer, importer, dealer, agent or person desires to offer for sale such concentrated commercial feeding stuff, in this state, and also a certificate, the execution of which shall be sworn to before a notary public, or other proper official, for registration, stating the name of the manufacturer, the location of the principal office of the manufacturer, the name, brand or trade-mark under which the concentrated commercial feeding stuffs will be sold, the ingredients from which the concentrated commercial

feeding stuffs are compounded, and the minimum percentage of crude fat and crude protein, allowing one per cent of nitrogen to equal 6.25 per cent of protein, and the maximum percentage of crude fiber which the manufacturer or person offering the concentrated commercial feeding stuff for sale guarantees it to contain. ('19 c. 260 § 1)

3875. Statement to be affixed to packages and samples—Any person, company, corporation or agent who shall sell, offer or expose for sale or distribution in this state, any concentrated commercial feeding stuffs shall affix, or cause to be affixed, to every package or sample of such concentrated commercial feeding stuffs, in a conspicuous place on the outside thereof, a tag or label which shall be accepted as a guarantee of the manufacturer, importer, dealer or agent, and which shall have plainly printed thereon in the English language, the number of net pounds of concentrated commercial feeding stuffs in the package, the name, brand or trade-mark under which the concentrated commercial feeding stuffs are sold, the name of the manufacturer, the location of the principal office of the manufacturer, and the guaranteed analysis, stating minimum percentage of crude fat and crude protein, and the maximum percentage of crude fiber, determined as provided in the provisions of this act, and the ingredients from which the concentrated commercial feeding stuff is compounded. For each one hundred pounds, or fraction thereof, the person, company, corporation or agent shall also affix the tag or label purchased from the dairy and food commissioner of the state of Minnesota, showing that the concentrated commercial feeding stuff has been registered as required by the provisions of this act, and that the inspection tax has been paid. When the concentrated commercial feeding stuff is sold in bulk, a tag, as hereinbefore described, shall be delivered to the consumer with each 100 pounds or fraction thereof, provided, that the state dairy and food commissioner's tags and labels shall be issued to cover twenty-five, fifty and one hundred pounds; provided further, that the state dairy and food commissioner is authorized to issue tags or labels of other denominations. ('19 c. 260 § 2)

3876. Registration by dairy and food commissioner and tags and labels to be supplied—Fees—The state dairy and food commissioner shall register the facts set forth in the certificate required by section 1 of this act in a permanent record, and shall furnish tags or labels showing the registration of such certificate to manufacturers or agents desiring to sell the concentrated commercial feeding stuff so registered at such times and in such numbers as the manufacturers or agents may desire; provided, that the state dairy and food commissioner shall not be required to sell tags or labels in less amount than to the value of five dollars (\$5.00) or multiple of five dollars, for any one concentrated commercial feeding stuff; provided further, that the state dairy and food commissioner shall not be required to register any certificates unless accompanied by an order and fees for tags or labels to the value of five dollars (\$5.00) or some multiple of five dollars; provided further, that such tags or labels shall be printed in such form as the state dairy and food commissioner may prescribe; provided, however, that each package or container of a concentrated commercial feeding stuff offered for sale in the state of Minnesota, containing one or more of the materials of low feeding value enumerated in section six of this act, in which the maximum crude fiber content of such concentrated commercial feeding stuff is twelve and one-half per cent or more, or the minimum crude protein

of such concentrated commercial feeding stuff is nine per cent or less, shall have attached to it a yellow tag or label, identical with the official tag as prescribed by the state dairy and food commissioner, except in color, and that there should be printed on this tag, in red ink, the per cent present of each material enumerated in section six, or the names and total per cent of all such materials or the names and maximum per cent thereof; provided further, that such tags or labels shall be good until used. ('19 c. 260 § 3)

3877. Sworn statement to be filed annually—On or before January 31st of each year, each and every manufacturer, importer, dealer, agent or person, who causes any concentrated commercial feeding stuff to be sold or offered or exposed for sale in the state of Minnesota, shall file with the state dairy and food commissioner of the state of Minnesota a sworn statement, giving the number of net pounds of each brand of concentrated commercial feeding stuff that such manufacturer, importer, dealer, agent, persons or person has sold or caused to be offered for sale in the state, for the previous year, ending with December 31; provided, that when the manufacturer, jobber or importer of any concentrated commercial feeding stuff shall have filed the statement aforesaid, any persons or person acting as agent for such manufacturer, importer or jobber, shall not be required to file such statement. ('19 c. 260 § 4)

3878. Fees for registering, inspecting and analyzing concentrated commercial feeding stuffs—Disposition of—Reports to Governor as to fees received and expenditures made, etc.—For the expenses incurred in registering, inspecting and analyzing concentrated commercial feeding stuffs, the state dairy and food commissioner shall receive for tags or labels furnished, to cover one hundred pounds, 80 cents for each one hundred tags or labels; to cover fifty pounds, 50 cents for each one hundred tags or labels; to cover twenty-five pounds 30 cents for each one hundred tags or labels; provided, that if the state dairy and food commissioner should, at his discretion, issue tags or labels to cover more than one hundred pounds or less than twenty-five pounds, as is provided in the provisions of this act, he shall receive for all tags or labels in excess of one hundred pounds, a proportional rate on the basis of a one hundred pound tag, and for all tags or labels issued in denominations of less than twenty-five pounds, he shall receive not less than 20 cents for each one hundred tags or labels. The money for said tags or labels shall be forwarded to the state dairy and food commissioner, who shall pay all such fees received by him to the treasurer of the state of Minnesota, who shall expend the same, on proper vouchers, to be filed with the auditor of the state in meeting all necessary expenses in carrying out the provisions of the act, including the employment of inspectors, chemists, expenses in procuring samples, printing bulletins giving the results of the work in feeding stuff inspection, as provided for by this act, and for any other expenses deemed necessary by the state dairy and food commissioner for carrying out the provisions of this act. The state dairy and food commissioner shall make to the governor on or before the first day of January of each year, a classified report showing the total receipts and expenditures of all fees received under the provisions of this act, as well as a statement showing the number of samples procured, the number of analyses made, and the names of manufacturers, importers, agents or dealers who have failed to comply with the provisions of this act, or whose concentrated commercial feed-

ing stuffs were found upon analysis to be below that guaranteed upon the tag or label. ('19, c. 260, § 5; amended '25, c. 179, § 1)

3879. Certain adulterations prohibited from commercial feeding stuffs—No person, company, corporation or agent shall offer for sale, sell or expose for sale any package or sample or any quantity of any concentrated commercial feeding stuffs which is adulterated with any foreign mineral matter or damaged feeding materials which have been reduced in feeding value to an extent as to be rendered unwholesome, or any foreign substance of low feeding value, such as mill, elevator, boat or other sweepings or dust; buckwheat hulls, cottonseed hulls, peanut hulls, peanut shells, rice hulls, oat hulls, corn cobs ground, cocoa shells, clipped oat by-products, ground or unground hulls, chaff, dust or other inferior cleanings derived from the preparation, cleaning or milling of any seed or grain when separated from the standard product, humus, peat, sphagnum moss, ivory nut turnings, ground corn stalks, flax plant by-products, sorghum pulp, ground or shredded straw or hay (excepting alfalfa meal or similar leguminous meals), sawdust, tree bark, cellulose or dirt, coffee hulls or chaff, or any other materials of equally low feeding value, without plainly stating on the tags or labels hereinbefore described, the components of such mixture, using the names by which each ingredient is commonly known. Provided, that if any concentrated commercial feeding stuff is adulterated with humus, peat or sphagnum moss, the maximum percentage of such humus, peat or sphagnum moss present in the concentrated commercial feeding stuff must also be stated upon the tag or label.

Provided further, that no concentrated commercial feeding stuffs shall be adulterated with any substance injurious to the health of domestic animals. ('19 c. 260 § 6)

3880. Powers granted state dairy and food commissioner—The state dairy and food commissioner or any person deputized by him is hereby empowered to procure from any lot, parcel or package of any concentrated commercial feeding stuff offered for sale or found in the state of Minnesota; and upon tender and full payment of the selling price of said sample take therefrom a quantity of commercial feeding stuff of not less than two pounds; provided, that such sample shall be obtained during reasonable business hours, or in the presence of the owner of the concentrated commercial feeding stuff, or in the presence of some person claiming to represent the owner. ('19 c. 260 § 7)

3881. Standards and definitions authorized to be promulgated—The state dairy and food commissioner is hereby empowered to promulgate standards and definitions for concentrated commercial feeding stuffs, and to subscribe and enforce such rules and regulations, relating to concentrated commercial feeding stuff as he may deem necessary to carry into effect the full intent and meaning of this act, and to refuse the registration of any concentrated commercial feeding stuff under a name which would be misleading as to the materials of which it is made or when the percentage of crude fiber is above or the percentage of crude fat or crude protein below the standards adopted by the state dairy and food commissioner for concentrated commercial feeding stuffs. The state dairy and food commissioner is further empowered to refuse to issue tags or labels to any manufacturer, importer, dealer, agent or person who shall sell or offer or expose for sale any concentrated commercial feeding stuff in the state of Minnesota and refuse to submit a

sworn statement as required by the provisions of this act. ('19 c. 260 § 8)

3882. County attorneys to prosecute for violations—It shall be the duty of every prosecuting attorney to whom the state dairy and food commissioner shall report any violation of this act to cause proceedings to commence against the person or persons so violating this act, and the same prosecuted in the manner required by law. ('19 c. 260 § 9)

3883. Articles included within terms—The term "concentrated commercial feeding stuffs" as used in this act shall include linseed meals, cocoanut meals, gluten feeds, gluten meals, germ feeds, corn feeds, maize feeds, starch feeds, sugar feeds, dried brewer's grains, malt sprouts, dried distiller's grains, dried beet refuse, hominy feeds, cerealine feeds, rice meals, rice bran, rice polish, peanut meals, oat feeds, corn and oat feeds, corn bran, wheat bran, wheat middlings, wheat shorts and other mill by-products not excluded in this section, ground beef or fish scraps, dried blood, blood meals, bone meals, tankage, meat meals, slaughter house waste products, mixed feeds, clover meals, alfalfa meals and feeds, pea vine meal, cottonseed meal, sunflower oil cake, velvet bean meal or any other leguminous meal, mixed feeds and mixed meals made from seeds or grains and all materials of similar nature used for food for domestic animals, condimental feeds, poultry feeds, stock feeds, patented proprietary or trade and market stock and poultry feeds; but it shall not include straws, hays, whole seeds, unmixed meals, made directly from the entire grains of wheat, rye, barley, oats, Indian corn, buckwheat and broom corn, nor wheat flours or other cereal flours. ('19 c. 260 § 10)

3884. Violations a misdemeanor—Any person, company, corporation or agent that shall offer for sale, sell or expose for sale any package or sample or any quantity of any concentrated commercial feeding stuff which has not been registered with the state dairy and food commissioner as required by the provisions of this act, or which does not have affixed to it a tag or label required by the provisions of this act, or which is found by an analysis made by or under the direction of the state dairy and food commissioner to contain a smaller percentage of crude fat or crude protein than the minimum guarantee, or a greater percentage of crude fiber than the maximum guarantee or which shall be labeled with a false or inaccurate guarantee, or who shall alter the tags or labels of the state dairy and food commissioner, or who shall use the name and title of the state dairy and food commissioner, or who shall use the tags or labels of the state dairy and food commissioner a second time, or who shall refuse or fail to make the sworn statement required under the provisions of this act, or who shall prevent or strive to prevent the state dairy and food commissioner, or any person or persons deputed by him, from inspecting and obtaining samples of concentrated commercial feeding stuffs, as provided for in this act, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in the sum of fifty dollars for the first offense, and in the sum of one hundred dollars for each subsequent offense. In all litigation arising from the purchase or sale of any concentrated commercial feeding stuff in which the composition of the same may be involved a certified copy of the official analysis signed by the state dairy and food commissioner or the chemist authorized by the state dairy and food commissioner to make such analysis, shall be accepted as prima facie evidence of the composition of such concentrated commercial feed stuff; provided,

that nothing in this act shall be construed to restrict or prohibit the sale of concentrated commercial feed stuff in bulk to each other by importers, manufacturers or manipulators who mix concentrated commercial feeding stuff for sale, or as preventing the free, unrestricted shipment of these articles in bulk to manufacturers or manipulators who mix concentrated commercial feeding stuff for sale, or to prevent the state dairy and food commissioner or any person or persons deputed by the state dairy and food commissioner, or the Minnesota agricultural experiment station, or any person or persons in the employ of the Minnesota agricultural experiment station, making experiments with concentrated commercial feeding stuffs for the advancement of the science of agriculture. ('19 c. 260 § 11)

3885. Chapter 383, General Laws 1907 repealed—Chapter 383, General Laws of Minnesota for the year 1907 is hereby repealed and all other acts and parts of acts inconsistent herewith are hereby repealed. ('19 c. 260 § 12)

3886. Sale of certain feeds prohibited—That it shall be unlawful for any manufacturer, company or person to sell, offer or expose for sale or for distribution in this state any concentrated commercial feeding stuff as defined in Section 10, Chapter 260, Laws of 1919, used for feeding farm live stock, which shall contain any weed seeds in which the germ and life has not been destroyed; provided, that this section shall not be deemed to make unlawful any sale by a retailer, who was not able, by reasonable diligence, to ascertain before such sale, the presence in any such concentrated commercial feeding stuff sold of such noxious seeds. ('23 c. 117 § 1)

Explanatory note—For Laws 1919, c. 260, § 10, see § 3883, herein.

3887. Sale of screenings prohibited—Exceptions—It shall be unlawful for any manufacturer, company or person to sell, offer or expose for sale, any screenings taken from any grain or seeds which shall contain any noxious or poisonous weed seeds the viability of which has not been destroyed; provided, that nothing in this section shall be construed to restrict or prohibit the sale of screenings to each other by jobbers, manufacturers or manipulators who mix or grind concentrated commercial feeding stuff for sale; provided further, that nothing in this section shall prohibit the sale of screenings in closely woven and securely tied sacks to purchasers who feed same to sheep which are kept and fed within enclosures. ('23 c. 117 § 2)

3888. Penalties for violation—Any person violating any of the provisions of this act shall be guilty of a misdemeanor and shall be punished by a fine of not less than \$50.00 and not more than \$100.00 or by imprisonment for not less than thirty days nor more than ninety days. ('23 c. 117 § 3)

3889. Duty of commissioner—The state dairy and food commissioner, his inspectors, assistants and employes shall enforce the provisions of this act, and in so doing shall have all the powers and authority with relation thereto that are conferred upon them, and each of them, by Chapter 260, Laws of 1919, and Chapter 495, Laws of 1921. ('23 c. 117 § 4)

Explanatory note—For Laws 1919, c. 260, see §§ 3874 to 3885, herein.

For Laws 1921, c. 495, see §§ 3788 to 3873, herein.

CANNED GOODS

3890. Manufacture and sale of canning compounds prohibited—It shall be unlawful for any person to

manufacture for sale within the State of Minnesota any article to be used as a canning compound or chemical preservative in the canning and preserving of fresh fruits and vegetables which is adulterated within the terms of this act, nor shall any person add to, apply or use, in the process of canning fruits or vegetables, any canning compound which is adulterated within the terms of this act.

Provided, that no article shall be deemed adulterated within the provisions of this act when intended for export to any foreign country or purchaser, and prepared and packed according to the specifications or directions of the foreign country to which said article is intended to be shipped; but if said article shall be in fact sold or offered for sale for domestic use or consumption, then this proviso shall not except said article from the operation of any of the other provisions of this act. ('15 c. 335 § 1)

3891. Possession a misdemeanor—The having in possession of any preservative compound which is adulterated as herein defined, with intent to sell the same, is hereby prohibited, and whoever shall have in his possession with intent to sell, sell or offer for sale any preservative compound, which is adulterated within the meaning of this act, shall be guilty of a misdemeanor, and, on conviction thereof, shall be punished as hereinafter provided.

Proof that any person, firm or corporation has or had possession of any preservative compound which is adulterated within the terms of this act shall be prima facie evidence that the possession thereof is in violation of this section. ('15 c. 335 § 2)

3892. Definition of term—The term "Preservative Compound," as used herein, shall include all articles used for preservative purposes, whether simple, mixed or compound, and any substance used as a constituent in the manufacture thereof. ('15 c. 335 § 3)

3893. Contents of compound—That for the purposes of this act a preservative compound shall be deemed to be adulterated if it contain any added poisonous or other added deleterious, unwholesome and injurious ingredient which may render said article injurious to public health; and formaldehyde, hydrofluoric acid, salicylic acid, sulphurous acid, and all compounds and derivatives thereof, are hereby declared unwholesome and injurious. ('15 c. 335 § 4)

3894. Dairy and food commissioner to enforce provisions—The dairy and food commissioner of the state is charged with the proper enforcement of all the provisions of this act. ('15 c. 335 § 5)

3895. Violation a misdemeanor—Whoever shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor, and violation thereof shall be punished by a fine of not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100), or by imprisonment in the county jail for not more than three (3) months. ('15 c. 335 § 6)

Explanatory note—Laws '15, c. 335, § 6 repeals Laws '12, c. 441 (G. S. '13, §§ 3725 to 3727).

FERTILIZERS

3896. Ingredients of fertilizer to be stated on label—That any person, firm or corporation who shall offer, sell or expose for sale, in the State of Minnesota, any commercial fertilizer the price of which exceeds five dollars (\$5.00) per ton, shall affix to every package, in a conspicuous place on the outside thereof, or furnish to the purchasers of goods sold in bulk, a plainly printed certificate, naming the materials, including the filler, if any, of which the fertilizer is

made, stating the number of pounds in the package sold, the name or trade-mark under which the article is sold, the name of the manufacturer and the place of manufacture; and a chemical analysis, stating the minimum percentage of nitrogen in available form, of potassium soluble in water, of phosphorus in available form (soluble or reverted) and of insoluble phosphorus. ('15 c. 251 § 1)

3897. Certified copy of certificate to be filed with dairy and food commissioner—Before any commercial fertilizer is sold, or offered for sale, the manufacturer, importer or party who causes it to be sold, or offered for sale, within the State of Minnesota, shall file in the office of the dairy and food commissioner a certified copy of the certificate referred to in Section 1 of this act and shall pay to the dairy and food commissioner on or before May 1st of each year a license fee of ten dollars (\$10.00) for each brand of fertilizer offered for sale or sold within the state. Provided, that whenever the manufacturer or importer shall have paid the license fee herein required for any year, no other person shall be required to pay such license fee for that brand. ('15 c. 251 § 2)

3898. Dairy and food commissioner to enforce provisions—The state dairy and food commissioner and his assistants shall enforce the provisions of this act, and he may publish annually a report of all analysis made and certificates filed. The inspectors and assistants of the dairy and food commissioner shall exercise, in the enforcement of this act, all the authority and powers now granted such assistants under the food and dairy laws of the State of Minnesota. The state dairy and food commissioner is hereby authorized, in person or by deputy, to take for analysis a sample from any lot or package of commercial fertilizer in this state, not exceeding two pounds in weight. ('15 c. 251 § 3)

3899. Violation a misdemeanor—Any person, firm or corporation who shall offer or expose for sale or sell any commercial fertilizer in the State of Minnesota without complying with the provisions of this act, or who shall use an analysis regarding any commercial fertilizer, which shall be false as to the constituents named in Section 1 of this act, or who shall obstruct or interfere with the dairy and food commissioner, or any of his assistants, in the discharge of their duties, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00) for each offense. ('15 c. 251 § 4)

Section 1 is § 3896, herein.

ADULTERATED OR MISBRANDED DRUGS.

3899-1. Manufacture, sale, etc., of adulterated, mislabeled or misbranded drugs prohibited—Penalty—The manufacture, production, preparation, compounding, packing, selling, offering for sale or keeping for sale, within the state of Minnesota, of any drug which is adulterated, mislabeled or misbranded, within the meaning of this act, is hereby prohibited. Any person, firm, company, or corporation who shall manufacture or produce, prepare or compound, pack or sell, offer for sale or keep for sale, within the state of Minnesota, any such adulterated, mislabeled or misbranded drug, shall be guilty of a misdemeanor. ('21, c. 190, § 1)

Explanatory note—Section 14 of Laws 1921, c. 190, repeals all inconsistent acts or parts of acts.

3899-2. Drug defined—That the term "drug" as used in this act shall include all medicines and preparations recognized in the United States Pharma-

copoeia or National Formulary, and any substance or mixture of substances intended to be used for the cure, mitigation or prevention of disease of either man or other animals. ('21, c. 190, § 2)

3899-3. Standards of purity of drugs—Regulations by State Board of Pharmacy—The standard of purity of drugs shall be the United States Pharmacopoeia or National Formulary. The regulations and definitions adopted for the enforcement of the National Food and Drugs Act of June 30, 1906, and any amendments thereof, may be adopted by the State Board of Pharmacy so far as applicable to the provisions of this act and the Board may adopt such other rules and regulations as may be necessary for the enforcement of this act. ('21, c. 190, § 3)

3899-4. Drugs deemed adulterated—Drugs shall be deemed adulterated within the meaning of this act in any of the following cases.

First: If, when a drug is sold under or by a name used in the United States Pharmacopoeia or National Formulary, it differs from the standard of strength, quality or purity, as determined by the test laid down in the United States Pharmacopoeia or National Formulary official at the time. Provided, that no drug defined in the United States Pharmacopoeia or National Formulary shall be deemed to be adulterated under this provision if the standard of strength, quality or purity be plainly stated upon the package thereof, although the standard may differ from that determined by the test laid down in the United States Pharmacopoeia or National Formulary.

Second: If the strength or purity fall below the professed standard or quality under which it is sold. ('21, c. 190, § 4)

3899-5. Misbranded defined—That the term "misbranded" as used herein shall apply to all drugs, the package or label of which shall bear any statement, design or device regarding such article or the ingredients or substances contained therein which shall be false or misleading in any particular, and to any drug which is falsely branded or labeled as to the county, city and county, city, town, state, territory, District of Columbia or foreign country in which it is manufactured or produced. ('21, c. 190, § 5)

3899-6. Drugs deemed mislabeled or misbranded—Drugs shall be deemed mislabeled or misbranded under the meaning of this act in either of the following cases:

First: If it be an imitation of or offered for sale under the name of another drug.

Second: If the contents of the package as originally put up shall have been removed, in whole or in part, and other contents shall have been placed in such package, or if the package as offered for sale at retail or wholesale, fail to bear a statement on the label of the percent by volume of alcohol, or the quantity of any morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, canabis indica, chloral hydrate, acetanilide or any derivative or preparation of any such substances contained therein, except when prescribed by a physician, dentist, or veterinarian duly licensed to practice under the laws of this state.

Third: If its package or label shall bear or contain any statement, design or device regarding the curative or therapeutic effect of such article, or any of the ingredients or substances contained therein, which is false and fraudulent. ('21, c. 190, § 6)

3899-7. Package defined—The term "package" as used in this act shall be construed to include any phial, bottle, jar, demijohn, carton, bag, case, can, box or

barrel or any receptacle, vessel or container of whatsoever material or nature which may be used by a manufacturer, producer, packer or dealer, for enclosing any drug but shall not include any shipping container in which properly marked packages are contained. ('21, c. 190, § 7)

3899-8. Sale or offer for sale prima facie evidence of violation of law—The sale or offering for sale, within this state, of any adulterated, mislabeled or misbranded drug by any manufacturer, producer, jobber, packer or dealer in drugs, or broker, commission merchant, agent, employee or servant of any such manufacturer, producer, jobber, packer or dealer, shall be prima facie evidence of the violation of this act. ('21, c. 190, § 8)

3899-9. Refusal to sell samples prima facie evidence of violation of law—It shall be prima facie evidence of the violation of this act for any person to refuse to sell to any agent of the state board of pharmacy, any sample of drug upon tender of the market price therefor, or to conceal any such drug from such officer, or to withhold from him information where such drug is kept or stored. ('21, c. 190, § 9)

3899-10. Duties of State Board of Pharmacy—It shall be the duty of the State Board of Pharmacy to enforce the provisions of this act and the power and authority of the said Board as now defined by the laws of this state are hereby extended so as to be commensurate with the duties hereby imposed. ('21, c. 190, § 10)

3899-11. Penalties for violations of law—Disposition of—That any person who shall violate any of the provisions of this act shall be guilty of a misdemeanor, and, for each offense, upon conviction thereof, be fined not to exceed fifty dollars; and upon conviction for any second or subsequent offense, shall be fined not to exceed one hundred dollars, and upon each conviction the person so convicted shall, in addition to the fine herein mentioned, pay all the cost of prosecution, including the expense incurred in examining and analyzing the article found to have been adulterated or misbranded; and all fines paid and collected for violations of this act shall be paid to the State Board of Pharmacy forthwith, the provisions of any statute, ordinance or charter to the contrary notwithstanding. The fines so collected shall be kept in a separate fund by the said Board, to be used in the enforcement of the provisions of this act. But the Board may use so far as they deem necessary other moneys in its hands for this purpose. ('21, c. 190, § 11)

3899-12. Application of law—The provision of this act relating to misbranding shall not apply to the distribution or sale, or to the possession with intent to distribute or sell by any dealer, of such drugs as may be in such dealer's stock, in this state, on October first, one thousand nine hundred and twenty-one; Provided, That the package or other container in which said drugs shall be contained shall be plainly and conspicuously marked with the words and figures: "On hand October first, one thousand nine hundred and twenty-one." ('21, c. 190, § 12)

INSECTICIDES

3900. Paris green and insecticides, sale of inaccurately labeled, etc.—Penalty—Whoever shall expose for sale or sell within this state any "paris green" or other insecticide which does not conform to all the requirements of this act, or which is labeled or marked in any manner so as to tend to deceive the purchaser

as to its nature or composition, or which is not accurately labeled as hereinafter required shall be guilty of a misdemeanor and for each offense shall, upon conviction thereof, be punished by a fine of not less than twenty-five dollars, and not more than one hundred dollars, or by imprisonment in the county jail not exceeding sixty days. ('09 c. 62 § 1) [3752]

3901. "Insecticide" defined—The term "insecticide" as used in this act shall include "paris green" and any other substance or mixture of substances intended to be used for preventing, destroying, repelling or mitigating any and all insects which may infest vegetation. ('09 c. 62 § 2) [3753]

3902. Formulas prescribed—Any insecticide labeled, marked or called "paris green" shall contain at least fifty per cent of arsenious oxide in combination with copper, not more of water-soluble arsenic than the equivalent of three and one-half per cent arsenious oxide, and no substance that would injuriously affect its strength or quality. And any insecticide labeled and called lead arsenate or arsenate of lead must contain at least fifty per cent of actual lead arsenate, at least twelve and one-half per cent of arsenious oxide, no more water-soluble arsenic than the equivalent of one per cent of arsenic oxide and no added substances that would injuriously affect the quality or strength. ('09 c. 62 § 3, amended '09 c. 100 § 1) [3754]

3903. Statement on label—The label required by this act shall clearly and distinctly state the name and residence of the manufacturer of the "paris green" or other insecticide, or the distributor thereof, or of the party for whom the same is manufactured and show the name, and with substantial accuracy, the percentage of each ingredient, both solid and liquid, contained therein; said label shall be printed in the English language in plain, legible type. ('09 c. 62 § 4) [3755]

3904. Possession prima facie evidence—The having in possession by any person, firm or corporation dealing in said articles, any article or substance hereinbefore described and not properly labeled, as provided in this act, shall be considered prima facie evidence that the same is kept by such person, or firm, in violation of the provisions of this act, and punishable under it. ('09 c. 62 § 5) [3756]

3905. Duty of commissioner—The dairy and food commissioner of the state is charged with the proper enforcement of all the provisions of this act. ('09 c. 62 § 6) [3757]

3906. Powers of commission—The said commissioner and the assistants, experts, chemists and agents shall be duly authorized for the purpose and shall have access and ingress to all the places of business, factories, stores and buildings used for the manufacture or sale of such "paris green" or other insecticide. They shall also have power and authority to open any package, can or other receptacle containing such "paris green" or other insecticide, that may be sold, manufactured or exposed for sale in violation of the provisions of this act. ('09 c. 62 § 7) [3758]

MINNESOTA CAUSTIC ALKALI OR ACID ACT.

3906-1. Definitions—That in this act, unless the context or subject-matter otherwise requires,

A. The term "dangerous caustic or corrosive substance" means each and all of the acids, alkalis, and substances named below: (a) Hydrochloric acid and any preparation containing free or chemically unneutralized hydrochloric acid (HCl) in a concentration of ten per centum or more; (b) Sulphuric acid and any preparation containing free or chemically unneu-

tralized sulphuric acid (H₂SO₄) in a concentration of ten per centum or more; (c) Nitric acid or any preparation containing free or chemically unneutralized nitric acid (HNO₃) in a concentration of five per centum or more; (d) Carboic acid (C₆H₅OH), otherwise known as phenol, and any preparation containing carboic acid in a concentration of five per centum or more; (e) Oxalic acid and any preparation containing free or chemically unneutralized oxalic acid (H₂C₂O₄) in a concentration of ten per centum or more; (f) Any salt of oxalic acid and any preparation containing any such salt in a concentration of ten per centum or more; (g) Acetic acid or any preparation containing free or chemically unneutralized acetic acid (HC₂H₃O₂) in a concentration of twenty per centum or more; (h) Hypochlorous acid, either free or combined, and any preparation containing the same in a concentration so as to yield ten per centum or more by weight of available chlorine, excluding calx chlorinata, bleaching powder, and chloride of lime; (i) Potassium hydroxide and any preparation containing free or chemically unneutralized potassium hydroxide (KOH), including caustic potash and Vienna paste, in a concentration of ten per centum or more; (j) Sodium hydroxide and any preparation containing free or chemically unneutralized sodium hydroxide (NaOH), including caustic soda and lye, in a concentration of ten per centum or more; (k) Silver nitrate, sometimes known as lunar caustic, and any preparation containing silver nitrate (AgNO₃) in a concentration of five per centum or more, and (l) Ammonia water and any preparation yielding free or chemically uncombined ammonia (NH₃), including ammonium hydroxide and "hartshorn," in a concentration of five per centum or more.

B. The term "misbranded parcel, package, or container" means a retail parcel, package, or container of any dangerous caustic or corrosive substance for household use, not bearing a conspicuous, easily legible label or sticker, containing (a) the name of the article; (b) the name and place of business of the manufacturer, packer, seller, or distributor; (c) the word "POISON," running parallel with the main body of reading matter on said label or sticker, on a clear, plain background of a distinctly contrasting color, in uncondensed gothic capital letters, the letters to be not less than 24 point size, unless there is on said label or sticker no other type so large, in which event the type shall be not smaller than the largest type on the label or sticker, and (d) directions for treatment in case of accidental personal injury by the dangerous caustic or corrosive substance. ('27, c. 187, § 1)

3906-2. Sale, etc., of misbranded, etc., packages prohibited—No person shall sell, barter, or exchange, or receive, hold, pack, display, or offer for sale, barter, or exchange any dangerous caustic or corrosive substance in a misbranded parcel, package, or container, said parcel, package, or container being designed for household use. ('25, c. 187, § 2)

3906-3. Seizure of misbranded, etc., packages—Any dangerous caustic or corrosive substance in a misbranded parcel, package, or container suitable for household use, that is being sold, bartered or exchanged, or held, displayed, or offered for sale, barter, or exchange, shall be liable to be seized and to be proceeded against in any court within the jurisdiction of which the same is found in manner and form as provided in the Minnesota Dairy and Food Law for seizure of and proceedings in case of food, and may be disposed of as therein provided. ('25, c. 187, § 3)

3906-4. Violation of law—Penalty—Any person violating the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof be punished by a fine of not less than \$25.00, or by imprisonment for not less than 30 days. ('25, c. 187, § 4)

3906-5. Enforcement of law by dairy and food commissioner—The dairy and food commissioner shall enforce the provisions of this act, and he is hereby authorized and empowered to approve and register such brands and labels intended for use under the provisions of this act as may be submitted to him for that purpose and as may in his judgment conform to the requirements of this statute: Provided, however, that in any prosecution under this act the fact that any brand or label involved in said prosecution has not been submitted to said commissioner for approval, or if submitted, has not been approved by him, shall be immaterial. ('25, c. 187, § 5)

3906-6. Prosecutions to be instituted by prosecuting officers—Every prosecuting officer to whom there is presented, or who in any way procures, satisfactory evidence of any violation of the provisions of this act shall cause appropriate proceedings to be commenced and prosecuted in the proper courts, without delay, for the enforcement of the penalties as in such cases herein provided. ('25, c. 187, § 6)

3906-7. Short title of law—This act may be cited as the "Minnesota Caustic Alkali or Acid Act." ('25, c. 187, § 7)

3906-8. Laws repealed—Pending prosecutions—That from and after the date when this act takes effect, all acts and parts of acts contrary to and inconsistent with the provisions of this act be and the same hereby are repealed, but nothing herein contained shall be construed as modifying or interfering with the institution or continuance of any prosecution based upon any violation of law committed before the passage of this act, nor with the enforcement of the penalties provided for any such violation by any act hereby repealed. ('25, c. 187, § 9)

31 ³⁹⁰⁷ 97 MILK, CHEESE AND BUTTER

3907. Discriminations—Any person, firm, co-partnership or corporation engaged in the business of buying milk, cream or butterfat for manufacture or for sale of such milk, cream or butterfat, who shall discriminate between different sections, localities, communities or cities of this state, by purchasing such commodity at a higher price or rate in one locality than is paid for the same commodity by said person, firm, co-partnership or corporation in another locality, after making due allowance for the difference, if any, in the actual cost of transportation from the locality of purchase to the locality of manufacture or locality of sale of such milk, cream or butterfat, shall be deemed guilty of unfair discrimination, and, upon conviction thereof, shall be punished by a fine not exceeding one hundred dollars, or by imprisonment in the county jail for not exceeding 90 days. ('21 c. 305 § 1, amended '23 c. 120 § 1)

This section was amended by Laws 1923, c. 120, by eliminating therefrom the provision making the discrimination dependent upon the "purpose of creating a monopoly, or to restrain trade, or to prevent or limit competition, or to destroy the business of a competitor." As so amended the section was held not to violate, the equality provision of the federal or state Constitution, nor to violate the commerce clause of the federal Constitution, nor to violate the liberty of contract provision of the federal or state Constitution in 162-146, 202+714, which decision was followed in 210+163, and in 210+168. On writ of error to the Supreme Court of the United States, from the last cited decision of the state supreme

court it was held that the section was unconstitutional as impairing the private right of freedom of contract guaranteed by the 14th amendment to the Federal Constitution. See Fairmount Creamery Co. v. State of Minn., — U. S. —, 47 S. C. R. 506, L. Ed. Ad. Op. 599, reversing 210 N. W. 608.

The venue in a prosecution under this section, may be laid in the county where the lower price is paid. 162-146, 202+714.

3908. Higher price—Proof that any person, firm, co-partnership or corporation has paid a higher price for milk or cream in one locality than in another, after due allowance for the cost of transportation has been made, shall be prima facie evidence of the violation of this act. ('21 c. 305 § 2)

3909. Dairy commissioner to enforce provisions—The state dairy and food commissioner, his assistant, inspectors, agents and employes shall enforce the provisions of this act, and in so doing shall have all the powers conferred upon them, and each of them, by the provisions of Chapter 21, Revised Laws of 1905. ('21 c. 305 § 3)

Explanatory note—Ch. 21, R. L. 1905, mentioned above, is set forth in this chapter in its amended form.

3910. Repeal—The following laws are hereby expressly repealed, to-wit:

Chapter 468 of the General Laws of 1909.

Chapter 230 of the General Laws of 1913.

Chapter 337 of the General Laws of 1917.

Provided, however, that the express or implied repeal by the provisions of this act of any law not in force shall not affect any action or proceeding now pending in any court. ('21 c. 305 § 4)

3911. Storage rooms for reception of milk and cream intended for shipment by common carriers—Construction and sanitary condition of rooms—Every person, firm or corporation, engaged in the business of buying and shipping milk or cream by common carrier, or operating a milk station where milk or cream is purchased and prepared for shipment by common carrier, shall provide, equip and maintain at every station where milk or cream is so received for shipment, a clean and sanitary room for the receiving, handling and storing thereof pending shipment. Said room shall be isolated and protected from contaminating surroundings, shall be constructed in a sanitary manner, and provided with screens on all doors and windows, and shall be well lighted and ventilated. The floor thereof shall be constructed of sanitary material, and shall be kept in a sanitary condition. Said room shall be equipped so as to maintain a supply of hot water of not less than five gallons and/or with live steam under pressure in sufficient quantity to meet all requirements. Said room shall be used exclusively for the receiving, handling, testing, and preparing for shipment of milk and cream. ('21, c. 306, § 1; amended '27, c. 282, § 1)

3912. Same—Rooms to be kept cool—Milk or cream stored or kept in any such receiving station awaiting shipment by common carrier shall be kept in a cool condition either by use of ice or a tank cistern or other device using cold water, to be approved by the dairy and food commissioner. ('21, c. 306, § 2; amended '27, c. 282, § 1)

3913. Same—Cans or receptacles to be cleaned—Milk or cream cans or receptacles returned to such receiving stations after use, shall be scalded, washed and cleaned before used again. ('21, c. 306, § 3; amended '27, c. 282, § 1)

3914. Same—Violations of law—Penalty—Any person, firm or corporation violating any of the provisions of this act shall be guilty of a misdemeanor and upon

conviction shall be punished by a fine of not less than \$25.00 nor more than \$100.00 or in lieu thereof by imprisonment for not less than 30 nor more than 90 days. Each period of 24 hours, or part thereof, during which a receiving station is maintained in an insanitary condition shall be deemed a separate offense. ('21, c. 306, § 4; amended '27, c. 282, § 1)

3915. Same—Inspection of rooms by dairy and food commissioner—Complaints of insanitary conditions—Testing licenses revoked—It shall be the duty of the dairy and food commissioner to inspect such milk and cream stations, and whenever he deems that any such station is not maintained in a sanitary condition to go before a magistrate and make proper complaint. Upon the conviction of any person of a second offense under this act, the testing license of such person shall automatically become null and void, and no further testing license shall be issued to such person until the period of two years shall have elapsed from the date of conviction of the second offense. ('21, c. 306, § 5; amended '27, c. 282, § 1)

3916. Same—Laws repealed—All acts and parts of acts inconsistent with the provisions of this act are hereby repealed. ('21, c. 306, § 6; amended '27, c. 282, § 1)

3916-1. Refrigeration shipment of cream—The shipment of cream for a distance of more than sixty-five (65) miles, over any railroad line in this state, except when such shipment is made in a refrigerator car, which car shall be kept at all times effectively iced and in a thoroughly sanitary condition, unless said cream shall have previously undergone an effective process of pasteurization, is hereby prohibited. ('13, c. 433, § 1) [4385]

124-239, 144+764; 125+334, 147+109.

3916-2. Same—Violation of law—Penalty—Any agent of any railroad company who shall ship or receive for shipment any cream except as provided in section 1 of this act, or any person who shall make any false statement or make or offer any certificate containing any false statement or make or offer any certificate containing any false statement in regard to the pasteurization of cream with the intent to secure shipment of said cream, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than fifteen (15) dollars nor more than seventy-five (75) dollars, and the shipment of each lot of cream prohibited by section 1 of this act shall constitute a separate offense. ('13, c. 433, § 2) [4386]

3917. Use of "butter" in advertising unlawful—It shall be unlawful for any person to make, publish, disseminate, circulate or place before the public, or directly or indirectly cause to be made, published, disseminated, circulated or placed before the public, in this state, in a newspaper or other publication, or in any book, notice, handbill, poster, bill, label, circular, pamphlet or letter, or in any other way, any publication advertising in any manner any food product or article of food produced or manufactured in whole or in part out of or from animal fats or vegetable oils, or any article or product manufactured or produced in imitation or semblance of natural butter, not produced wholly from pure, unadulterated milk or cream, in or as a part of or connected with which publication the word "butter" is used or appears; provided, that the word "butter" may be used in designating the food article known to the trade as "plum butter," "apple butter," "peanut butter," when used in connection with the name of article manufactured from; and, provided further, that nothing herein contained shall repeal or

modify any of the provisions now in force for the labeling of the food product known as "oleomargarine." ('21 c. 309 § 1)

3918. Violation a misdemeanor—Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor. ('21 c. 309 § 2)

3919. Dairy and food commissioner to enforce provisions of act—It shall be the duty of the state dairy and food commissioner to enforce the provisions of this act, and of all county attorneys, upon complaint made, to prosecute all persons violating any of the provisions hereof within their respective counties. ('21 c. 309 § 3)

3920. Butter fat not to be used in substitutes—No person, firm or corporation shall mix, compound or use any butter fat with or to any oleomargarine or any article or product containing animal or vegetable oils and intended for use as a butter substitute, except that skimmed milk or buttermilk may be used in the churning or manufacture of oleomargarine or other similar product. Violations of this act shall be a misdemeanor and shall be punished accordingly. ('23 c. 10 § 1)

3921. Oleomargarine not to be used in state institutions—The service of oleomargarine or any other butter substitute to the inmates of any state institution as a substitute for table butter is hereby prohibited. ('21 c. 438 § 1, amended '23 c. 24 § 1)

3922. Violations—Penalties—Any officer in charge of any state institution affected by this act who shall knowingly violate the provisions of this act shall be dismissed from the service of the state immediately by the officer or board by whom he is appointed. ('21 c. 438 § 2, amended '23 c. 24 § 2)

3923. Manufacturers of butter substitutes not to use certain words in advertising—No person shall use in any way in connection or association with the sale or offering or exposure for sale or advertisement of any substance designed to be used as a substitute for butter, the word "butter," "creamery" or "dairy," or the name or representation of any breed of dairy cattle, or any combination of such word or words and representation, or any other words or symbols or combination thereof commonly used in the sale of butter. ('23 c. 116 § 1)

3924. Violation a misdemeanor—Any person who shall violate any provision of this act shall be deemed guilty of a misdemeanor. ('23 c. 116 § 2)

3925. Dairy and food commissioner to enforce act—The dairy and food commissioner shall cause the provisions of this act to be enforced, and to that end he shall exercise all power and authority conferred upon him by the provisions of Chapter 495, Laws 1921, known as the "Minnesota Dairy and Food Law." It shall be the duty of every prosecuting officer to whom the commissioner shall report any violation of this act, to cause appropriate proceedings to be instituted in the proper courts and prosecuted without delay for enforcement of the penalties herein specified. ('23 c. 116 § 3)

Explanatory note—For Laws 1921, c. 495, see §§ 3788 to 3873, herein.

3926. Sale, etc., of adulterated milk, cream, condensed or evaporated cream, skim milk, buttermilk, condensed or evaporated milk, powdered milk, condensed skim milk, or butter or cheese prohibited—It shall be unlawful for any person, firm or corporation, by himself, his employee or agent, or as the employee or agent of another, to manufacture, sell or exchange, or have in possession with intent to sell or exchange, any milk, cream, condensed or evaporated cream, skim milk, buttermilk, condensed or evaporated milk, pow-

dered milk, condensed skim milk, or any of the fluid derivatives of any of them, or any butter or cheese, to which has been added any fat or oil other than milk fat, either under the name of said products or articles or the derivatives thereof, or under any fictitious or trade name whatsoever. ('23, c. 126, § 1; amended '25, c. 203)

3927. Violations and penalties—Any violation of any of the provisions of this act is hereby declared to be a misdemeanor, and any person, whether individually or as a member of a partnership, or as a responsible agent or officer of a corporation who shall be convicted of such violation, either on his own behalf or in the interests of a corporation, shall be punished by imprisonment in the county jail for not less than thirty days nor more than sixty days or by a fine of not less than fifty dollars nor more than one hundred dollars. ('23 c. 126 § 2)

3928. Dairy and food commissioner to enforce laws—The dairy and food commissioner, by himself or by his assistants, chemists, inspectors or agents, shall be charged with the enforcement of the provisions of this act. ('23 c. 126 § 3)

3929. Milk and cream cans must be sterilized—All persons receiving, buying or handling cream for use, either locally or after shipment, in the manufacture of butter or cheese, in cans or other receptacles which are to be returned to the senders or sellers, shall thoroughly sterilize all such cans and receptacles with live steam under pressure, before returning them to the senders or sellers. ('23 c. 173 § 1)

3930. Violation a misdemeanor—Every person who shall violate or fail or refuse to comply with any provision of this act shall be deemed guilty of a misdemeanor. ('23 c. 173 § 2)

3931. Dairy and food commissioner to enforce provisions of act—The dairy and food commissioner shall cause the provisions of this act to be enforced, and it hereby is made the duty of every prosecuting officer to whom the commissioner shall report any violation of or failure or refusal to comply with any of its provisions to institute and prosecute without delay appropriate proceedings in the proper courts for enforcement of the penalties herein prescribed therefor. ('23 c. 173 § 3)

3932. Effective January 1st, 1924—This act shall take effect and be in force from and after January 1, 1924. ('23 c. 173 § 4)

3933. Certain butter compounds must be labeled—No person shall sell or offer or expose for sale or have in possession with intent to sell or offer or expose for sale, any butter in whole or in part made from neutralized cream or milk unless the words "made from neutralized cream (or milk)" shall be printed, marked or stamped on each receptacle, package or wrapper in which such butter is offered or exposed for sale or is sold, in letters at least one-fourth of an inch wide and one-half of an inch high; and if such butter is offered or exposed for sale, uncovered or not in a receptacle, package or wrapper, then a placard containing the words "made from neutralized cream (or milk)" printed, stamped or marked thereon in style and manner aforesaid, shall be attached to the mass or butter in such manner as to be easily seen and read by the purchaser. ('23 c. 175 § 1)

3934. Violation a misdemeanor—Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor. ('23 c. 175 § 2)

3935. Dairy and food commissioner to enforce act—The dairy and food commissioner shall cause the provisions of this act to be enforced, and it hereby is

made the duty of every prosecuting attorney to whom the commissioner shall report any violation of this act to cause appropriate proceedings to be commenced and prosecuted without delay in the proper courts for enforcement of the penalties hereof. ('23 c. 175 § 3)

3935-1. Licensing and regulating creameries, cheese factories, condenseries, milk plants, and cream stations—Licenses required—Applications for—Fees—Issue by commissioner—No creamery, cheese factory, condensery or milk plant for the manufacture of butter or other dairy products, or any cream station maintained for the purpose of purchasing, collecting or storing cream or milk to be used in the manufacture of butter or cheese or other dairy products or for transportation, shall be operated in this state unless a license therefor shall be issued and be in force as herein provided. The owner, operator or lessee of any such creamery, cheese factory, condensery, milk plant or cream station shall apply to the dairy and food commissioner for such license upon such form and shall furnish such information as the commissioner may require. The application shall be accompanied by a fee of \$1.00 for each place to be licensed, which shall be paid into the state treasury. If the commissioner finds that such applicant maintains a proper place with sufficient and proper machinery and equipment for the manufacture of butter or cheese or other dairy products, or for maintaining a cream station as required by law in this state and the rules and regulations of the commissioner, he shall issue the license so applied for. All such licenses shall expire on June 30th of each year, unless sooner revoked as herein provided. A separate license shall be required and the prescribed fee shall be paid for each such creamery, cheese factory, condensery, milk plant or cream station. ('27, c. 187, § 1)

3935-2. Same—Violations of law—Penalty—Any person who shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than \$25.00 or by imprisonment for not less than 30 days, and each subsequent offense by a fine of not less than \$50.00 or imprisonment for not less than 60 days. ('27, c. 187, § 2)

3935-3. Same—Suspension or revocation of licenses—Whenever any person licensed hereunder shall have been convicted of a violation of any provision of this act, or any provision of the Minnesota Dairy and Food Laws, or any provision of any other law of this state relating to the manufacture or sale of butter or cheese or other dairy products, or the operation of creameries, cheese factories, condenseries, milk plants, or cream stations maintained for the purchasing, collecting or storing of milk and/or cream to be manufactured into butter or cheese or other dairy products, or for transportation, or of any provision of any rule or regulation of the commissioner made and promulgated under the provisions of law, his license may be suspended for the time stated in order of suspension, or may be revoked or cancelled by the dairy and food commissioner upon 10 days' written notice with opportunity to be heard; upon conviction of a second or any subsequent offense the commissioner may revoke and cancel such license with or without notice of hearing in his discretion, and in such case said commissioner shall not issue another license for the operation of such creamery, or cheese factory, or condensery, or milk plant, or cream station for a term of one year from the date of such cancellation or revocation. ('27, c. 187, § 3)

3935-4. Same—Enforcement of law by commissioner—Laws applicable—The dairy and food commission-

er shall enforce the provisions of this act and in so doing shall have all the power and authority with relation thereto that is conferred upon him by Chapter 495, Laws 1921, known as the Minnesota Dairy and Food Law, and the provisions of Section 43 of said chapter shall be deemed a part thereof in the enforcement of this act and the accomplishment of its purposes. ('27, c. 187, § 4)

Explanatory note—For Laws 1921, c. 495, see § 3788, et seq., herein. For § 43 of said Laws 1921, see § 3832, herein.

3935-5. Same—Prosecutions instituted by prosecuting officers—It shall be the duty of every prosecuting officer to whom the commissioner shall report any violation of this act to cause appropriate proceedings to be instituted and to be prosecuted in the proper courts without delay for the enforcement as in such cases herein provided. All fines imposed and paid hereunder shall be paid into the state treasury. ('27, c. 187, § 5)

3935-6. Same—Laws repealed—Chapter 271, Laws 1925, is hereby repealed. ('27, c. 187, § 6)

Explanatory note—Laws 1925, c. 271, repealed by this section is an act entitled: "An act providing for licensing creameries for the manufacture of butter, for suspending, cancelling or revoking the licenses thereof, and prescribing penalties."

PAINTS

3936. Linseed oil—Pure linseed oil shall be defined as the oil obtained wholly from the seeds of the flax plant and containing no added ingredient. Pure "boiled" linseed oil is composed wholly of pure linseed oil with so-called dryers added thereto, to an amount not exceeding three per cent of the total product. Pure linseed oil as distinguished from pure "boiled" linseed oil shall be known as "raw" linseed oil. If designed or offered for sale or use as either raw or boiled linseed oil, or as a substitute for either, or in imitation of either, any substance or preparation which is not pure, within the meaning of either of the above definitions, shall be deemed adulterated, and the manufacture or sale thereof is prohibited. No person shall sell either pure raw linseed oil or pure boiled linseed oil, unless each receptacle in which the same is kept for sale or sold, shall have distinctly, legibly and durably painted, stamped, stenciled or labeled thereon the true name of such oil, setting forth in bold-face capital letters not smaller than one inch in length, whether it be "pure raw linseed oil" or "pure boiled linseed oil;" and there shall also appear upon such receptacle the name and address of the manufacturer of such oil. (1772) [3733]

93-155, 100+641; 193 Fed. 207.

3937. Paints—No person shall sell as pure white lead paint any compound containing ingredients other than carbonate of lead and pure linseed oil; or as pure mixed paint any compound containing ingredients other than pure linseed oil, pure carbonate of lead, oxide of zinc, turpentine, japan dryer and pure colors. Every person who shall mark or otherwise represent as pure any paint not conforming to the requirements aforesaid, or who shall otherwise violate any provision of this section or § 3936, shall be deemed guilty of a misdemeanor. (1773) [3734]

3938. Paints—False label—Penalty—Whoever shall expose for sale or sell within this state, any paint which is labeled or marked in any manner so as to tend to deceive the purchaser as to its nature or composition, or which is not accurately labeled as herein-after required, shall be guilty of a misdemeanor, and

for each offense shall, upon conviction thereof, be punished by a fine of not less than twenty-five dollars, and not more than one hundred dollars, or by imprisonment in the county jail not exceeding sixty days. ('07 c. 421 § 1) [3735]

3939. Paint defined—The term "paint" as used in this act shall include white lead in any kind of oil, or any compound intended for the same use, paste or semi-paste, and liquid or mixed paint ready for use. ('07 c. 421 § 2) [3736]

3940. Labels—Shall state, what—The label required by this act shall clearly and distinctly state the name and residence of the manufacturer of the paint, or the distributor thereof, or of the party for whom the same is manufactured and show the name, and with substantial accuracy, the percentage of each ingredient, both solid and liquid, contained therein; provided, however, that in case of paint other than white paint, the ingredients other than the coloring material, may be treated as 100 per cent. In which case, it shall be necessary to state not only the name and percentage of each ingredient other than the coloring matter, but also the description or trade name of such coloring material, and state with substantial accuracy, its chemical analysis, said label shall be printed in the English language in plain, legible type. ('07 c. 421 § 3) [3737]

3941. Possession as evidence—The having in possession by any person, firm or corporation dealing in said articles, any article or substances hereinbefore described and not properly labeled, as provided in this act, shall be considered prima facie evidence that the same is kept by such person, or firm, in violation of the provisions of this act and punishable under it. ('07 c. 421 § 4) [3738]

3942. Commissioner to enforce—The dairy and food commissioner of the state is charged with the proper enforcement of all the provisions of this act. ('07 c. 421 § 5) [3739]

3943. Powers of commissioner—The said commissioner and the assistants, experts, chemists and agents, shall be duly authorized for the purpose and shall have access and ingress to all the places of business, factories, stores and buildings used for the manufacture or sale of paints. They shall also have power and authority to open any package, can, tub or other receptacle containing paints that may be sold, manufactured or exposed for sale in violation of the provisions of this act. ('07 c. 421 § 6) [3740]

3944. Labeling of wood alcohol—No person, by himself, his servant or agent, or as the servant or agent of another person or persons, shall sell, exchange, deliver or have in his custody or possession with intent to sell, exchange or deliver, or expose or offer for sale, exchange or delivery, any wood alcohol, or substance commonly known as wood alcohol, unless each package, bottle, cask, can or receptacle containing the said wood alcohol shall be plainly marked, stamped, branded or labeled on the outside and face of each said package, bottle, cask, can or receptacle of the capacity of less than one gallon, in legible type not smaller than large primer, and on the outside and face of each package, bottle, cask, can or receptacle of the capacity of one gallon or more, in legible letters of not less than one inch in length, the letters and words "wood naphtha," "poison." ('05 c. 35 § 1) [3750]

3945. Penalty for violation—Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor and be punished by a fine of not less than fifty dollars and not more than one hundred dollars, for each and every offense, or by imprisonment

3936-40
174m 49r
219nw 70d

in the county jail for not less than thirty days, or more than ninety days. ('05 c. 35 § 2) [3751]

AGRICULTURAL SEEDS.

3946 to 3957. [Repealed.]

These sections (Laws 1913, c. 141, as amended by Laws 1921, c. 480; G. S. 1913, §§ 3759 to 3770) are repealed by Laws 1927, c. 387, § 12. See § 3957-12, herein.

3957-1. Definitions—The term "agricultural seeds" or "agricultural seed" as used in this Act shall include the seeds of corn, wheat, oats, barley, rye, emmer, flax, sudan grass, sorghum, buckwheat, sweet clover, medium and mammoth red clover, alsike clover, white clover, alfalfa, soybeans, field peas, beans, vetches, rape, timothy, bromus, redtop, Kentucky blue grass, Canada blue grass, rye grass, sweet vernal grass, fescue, millet, oat grass, orchard grass, wheat grass and all other seeds used for planting or sowing for agricultural and lawn purposes and shall be construed to mean such seed when sold, offered or exposed for sale or had in possession with intent to sell or as a sample representing any lot of seed elsewhere stored and for sale within this state for purposes of sowing or planting.

The word "kind" shall mean variety, sort or species, indicating the commonly accepted name of such seed.

The word "approximate" when referring to amounts relating to purity of agricultural seeds or percentages shall mean within the range of tolerance of inert matter and of other agricultural seeds and of all weed seeds contained with the agricultural seed in question and obtained on the basis of a 0.2 per cent fixed figure plus 20 per cent of the lesser part.

The word "person" shall be construed to import both the plural and the singular, as the case demands and shall include corporations, co-partnerships, companies, societies, firms and associations.

The word "Commissioner" means the Commissioner of Agriculture of the State of Minnesota.

The word "weed seed" shall be construed to mean the seeds and the bulblets of any and all weeds designated in Section 2 of Chapter 377, Session Laws of 1925, and such other annual, biennial and perennial plants that grow with crops raised in the field, the garden, the lawn and waste areas throughout this state, causing either damage to crops or interference with travel or other public inconvenience or injurious to public health.

The word "sell" shall be construed as including the offering or exposing for sale or exchange of the prohibited article, the having of any such article in possession with intent to sell or exchange the same, and the storing, carrying or handling thereof in aid of traffic therein, whether done or permitted in person or through others.

The word "germination" shall mean a seed showing growth of a plumule (stem) or a radicle (root) or both these growths which are commonly accepted as evidence that under normal environment would produce a mature plant.

The word "Gothic caps" means the type of copy with letters the size and character as the following: "TYPE."

The words "pure seed" shall mean agricultural seed exclusive of inert matter and all other seeds not of the kind of seed being considered.

The word "mixture" or "mixtures" shall mean two or more agricultural seeds intermingled in the same container, when each is in excess of five (5) per cent by weight of the whole. Except that in the case of

lawn grass the exact percentage by weight of each shall be given. ('27, c. 387, § 1, effective July 1, 1927)

3957-2. Powers of commissioner of agriculture—Rules and regulations—Investigations—Access to premises, etc.—Complaints of violations—Hearings—Procedure—Contempts—State seed laboratory—Samples for examination, etc.—Reports of examinations, etc.—Fees—Violations of law—Hearings—Prosecutions—The commissioner of agriculture is hereby authorized and it shall be his duty to execute this law and to that end he may make and enforce such rules and regulations as in his judgment shall be necessary. He shall investigate the subject of weed seeds and other matters pertaining to seeds and to that end may require information from county agents, dealers in agricultural seeds, transportation companies, local weed inspectors and experiment stations as to the presence of inert matter and of weed seeds or any other foul seeds and their control in the localities where such officials or persons reside or have jurisdiction. He or his agents or assistants may enter and have free access at all reasonable hours upon and into any premises or structures to make examination of any seeds, whether such seeds are upon the premises of the owner of such seeds or on other premises, or in the possession of any warehouse, elevator or railway or other transportation company and upon the tendering of payment therefor at the current value thereof, may take any sample or samples of such seed.

(b) For the purpose of enforcing the provisions of this Act, the commissioner shall have the authority either on his initiative or upon complaint being filed with him for any alleged violation of the provisions of this Act or any rule or regulation issued thereunder, or upon information furnished by an inspector of the Department of Agriculture, to hold hearings and conduct such investigations as he may deem advisable. He shall have and is hereby granted full authority to issue subpoenas requiring the attendance of witnesses before him of books, papers and other documents, articles or instruments and to compel the disclosure by such witnesses of all facts known to them relative to the matter under investigation. He shall have full authority to administer oaths and to take testimony; and may make a report thereon, which report shall be prima facie evidence of the matters therein contained. All parties disobeying the orders or subpoenas issued hereunder by the commissioner shall be guilty of contempt as in proceedings in district courts of the state and may be punished in like manner.

(c) No action or claim for damages shall be allowed or shall be sustainable against the commissioner or any one acting for him or by his authority in respect to the enforcement of this section.

(d) A State Seed Laboratory shall be maintained for the purpose of examining seeds for specific purity, kinds and amounts of inert matter and of [weed] seeds and for making germination tests and any other seed studies deemed by the commissioner as advisable.

(e) (1) Any person of this state may, in accordance with the rules and regulations of the commissioner and by prepaying the transportation charges and such fees as hereinafter mentioned, send a sample or samples of seed to the State Seed Laboratory or to the commissioner for examination, analysis and determination and receive a report of such examination, analysis or determination when completed. Said report shall constitute and be a certificate of the State Seed Laboratory giving results of such examination, analysis or determination of said seed sample and said

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Potatoes
81 — 70
34 — 41

certificate shall be presumptive evidence of the facts therein stated.

(2) (a) The commissioner is authorized and it is hereby made his duty to collect a fee or fees as herein provided for making tests, analysis or determinations of seeds and the amount of such fee or fees shall be received by him before any report of seeds examined shall be given to the person sending the same. Except that any person may send as many as ten (10) such samples during any one year and receive report of same after examination has been made, without paying the required fee. All fees and moneys collected shall be deposited in the State Treasury, as other departmental receipts are deposited, but shall constitute a separate account known as the "Seed Act Account" which is hereby created, set aside and appropriated as a revolving fund to assist in meeting the expense of inspection, laboratory and other services rendered as herein provided.

(b) The fee or fees to be paid as herein referred to shall be twenty-five (.25) cents for each and every germination test.

For pure-seed analysis and determination the fee or fees shall be:

(1) Twenty-five (.25) cents each for wheat, oats, barley, rye, emmer, vetch, buckwheat, sudan grass.

(2) Fifty (.50) cents each for timothy, rye grass, fescues, slender wheat grass, millet, bromus, red clover, alfalfa, alsike, clover, sweet clover.

(3) One (\$1.00) dollar each for white clover, all mixtures of clovers, redtop, orchard grass, bent grass.

(4) Two (\$2.00) dollars each for Kentucky blue grass and other blue grasses, all lawn grass mixtures.

For the purpose of carrying out the provisions of this section, the commissioner shall designate the proper charge to be made for seeds not herein mentioned and sent him for test, analysis and determination.

(f) When by analysis or otherwise it shall be made to appear that any person has violated any of the provisions of this Act or any rule or regulation issued thereunder, it shall be the duty of the commissioner to notify said person in whose possession the seed in question was found or the owner thereof, if known, and designate a time and place for a hearing for receiving evidence as to such alleged violation. After such hearing or upon failure of said person to appear at the time and place fixed therefor, the commissioner may transmit the facts so found to the Attorney General and it shall be the duty of the Attorney General, or in the discretion of the commissioner, he may act through the county attorney of the county in which said violation was committed, whose duty it shall then be to forthwith institute proceedings and prosecute the same against the person charged with such violation. It is hereby made the duty of the county attorney to prosecute any and all such cases submitted to him by the commissioner or the Attorney General. ('27, c. 387, § 2, effective July 1, 1927)

3957-3. Labels for packages—Contents—Weed seed tolerance—The owner or person in possession of each and every package, parcel or lot of agricultural seed as herein defined, which contains one (1) pound or more of such agricultural seed, whether in package or in bulk, shall affix thereto in a conspicuous place on the exterior of the container of such agricultural seed a written or printed label in the English language in legible type or copy not smaller than eight point heavy

Gothic caps; such label shall contain a statement specifying:

(a) The commonly accepted name of the kind or kinds of such agricultural seed; if the name of a special variety or strain of such seed is used, it must be the true name of such special variety or strain.

(b) The approximate percentage germination test made of such agricultural seed together with the date of said test of germination.

(c) The approximate total percentage by weight of weed seeds of all species and the approximate number in a pound in excess of twenty-four in grass, clover and alfalfa seed and in excess of ten in all other agricultural seeds of each of the following weed seeds: Quack Grass (*Agropyron repens*), Canada Thistle (*Carduus arvensis*), Perennial Sow Thistle (*Sonchus arvensis*), Dodders (*Cuscuta spp.*), Leafy Spurge (*Euphorbia esuia*), Ox-Eye Daisy (*Chrysanthemum leucanthemum*), and Buckhorn Plantain (*Plantago lanceolata*).

(d) The approximate percentage by weight of the agricultural seed exclusive of inert matter, weed seeds and of other agricultural seeds, which are distinguishable by their appearances.

(e) If such agricultural seed is grown in this state, the words "grown in Minnesota" and in the case of corn, the name of the county in which grown, and if not grown in this state, the name of the state or country in which such corn was grown, and in the case of clovers and alfalfa seeds, when any portions thereof are from countries other than the United States, the name of the country where grown, and such seeds shall bear the coloring designated by the "Federal Seed Act" of 1912 as amended April 26, 1926.

(f) The full name and address of the seedsman, importer, dealer or agent or other person selling, offering or exposing for sale said agricultural seed. It shall be unlawful for any person to expose seed for sale or any sample representing seed for sale for which ownership or responsibility is not acknowledged.

(g) It shall be unlawful for any person to sell, offer or expose for sale or distribution in this state or to have in possession with intent to sow, any agricultural seed or mixtures of agricultural seeds for seeding purposes when:

(1) Such agricultural seed contains any one or all of the noxious weed seeds named in Section 3 (c) of this act, in excess of ninety such weed seeds per pound.

(2) Such agricultural seed contains two or more per cent by weight of all other weed seeds.

(h) The commissioner may fix the weed seed content allowable in the case of any agricultural seeds, when in his judgment the character of such seeds preclude the removal of certain weed seeds to a two per cent basis as defined in (2) of this section. ('27, c. 387, § 3, effective July 1, 1927)

3957-4. Mixtures — Labels — Special mixtures —
(A) Whenever mixtures of seeds of timothy with alsike clover, with medium red or mammoth clover, with redtop or mixtures of other agricultural seeds are sold, offered or exposed for sale in quantities of one pound or more, such seeds shall be subject to the requirements of this act and the rules and regulations of the commissioner governing, unless otherwise provided, and shall in addition thereto have printed or copied on the label in eight point Gothic caps, in the English language, stating:

(a) That such seed is a mixture.

(b) The name and approximate percentage by

weight of each kind of agricultural seed in such mixture.

(c) The per cent of germination of each kind of agricultural seed, together with the date of such germinations.

(B) Special mixtures of agricultural seed except as specified in Sec. 4 (A) of this act, when sold, offered or exposed for sale as mixtures, in bulk, packages or other containers of eight ounces or more shall have fixed thereto in a conspicuous place on the exterior of the container of such mixture a plainly printed or written tag or label in the English language in legible type or copy not smaller than eight point Gothic caps stating:

(a) That such seed is a mixture.

(b) The name of each kind of agricultural seed contained therein and the approximate percentage germination.

(c) The approximate total percentage by weight of all weed seeds and, except in lawn mixtures, the approximate number of seeds per pound of the noxious weed's seeds listed in Sec. 3 (c) of this act.

(d) The approximate percentage by weight of inert matter.

(e) The full name and address of the vendor or agent of such seed. ('27, c. 387, § 4, effective July 1, 1927)

3957-5. Exceptions from operation of law—Except as herein otherwise provided in Section 3 (g), the provisions of this act shall not apply:

(a) To any person selling, offering or exposing for sale or in possession of agricultural seeds for the purpose of seeding, except to the ultimate user, when such seed is plainly marked on the label or outside of the container "not cleaned seed" or "uncleaned seed."

(b) To agricultural seeds marked plainly on the label or on the outside of the container, "not cleaned" and held or sold for shipment for recleaning and for shipment outside the state only.

(c) To agricultural seeds when possessed or exposed for sale, as provided by this act, for food purposes only. ('27, c. 387, § 5, effective July 1, 1927)

3957-6. Imported seeds—Labels—Except as herein otherwise provided it shall be unlawful for any person to import or bring into this state or transport within this state any agricultural seeds unless each and every container of such seeds shall bear a label attached in a conspicuous place on said containers and having written or printed thereon in the English language in legible type or copy not smaller than eight point Gothic caps, specifying: The kind and varietal name of the seed; the per cent of pure seed; the per cent and date of germination; the state from which said seed is shipped and in the case of corn, the county in which said seed was grown; the full name and address of the person shipping such seed and in all other respects such agricultural seed shall conform to the provisions of this act and the rules and regulations of the commissioner. ('27, c. 387, § 6, effective July 1, 1927)

3957-7. Transportation companies—Duties—In any case of violation of the preceding section, the transportation company, bus company, moving company, corporation or agent thereof, or public carrier of any name or nature shall at once notify the commissioner of such violation, citing the circumstances and full particulars thereof, and shall unload or hold at the first station within the borders of this state where adequate storage facilities may be had and hold same subject to the instructions of the commissioner. ('27, c. 387, § 7, effective July 1, 1927)

3957-8. Seizures—The commissioner is authorized and it is hereby made his duty to seize or cause to be seized and held any lot, parcel, package or bulk of agricultural seeds or mixtures of same found in violation of any of the provisions of this act or any rule or regulation hereunder until the law or such rules and regulations have been complied with or said violation otherwise disposed of as herein otherwise provided, and no action or claim for damage shall be allowed or shall be sustainable against the commissioner or any one acting under his direction or authority in respect thereto. ('27, c. 387, § 8, effective July 1, 1927)

3957-9. Same—Disposition of seized seeds—The commissioner upon seizing agricultural seeds as in this act provided and authorized, shall at once notify the person who was in possession of such seeds or the owner thereof or his agent in charge thereof, of such fact and return said seed to the consignor upon receipt of the expenses as herein set forth and presented to him. Such consignor shall be responsible for all transportation charges and other necessary expenses in handling, storing or caring for said seed and shall return to the purchaser the value of such seed if the purchaser has advanced the payment therefor, provided however, the commissioner shall receive all such costs before such seed is billed for return shipment or delivery thereof. After a period of ten days from the date of notice by the commissioner as herein provided, if said costs are not paid the commissioner may confiscate said seed and destroy or otherwise dispose of it to prevent its use for seeding purposes within this state and the net proceeds, if any, from the sale of such seeds by the commissioner shall be transmitted to the State Treasurer to the credit of the State Seed Act fund. ('27, c. 387, § 9, effective July 1, 1927)

3957-10. Violations of law—Penalties—Any person who sells, offers or exposes for sale or distribution in this state any agricultural seeds for sowing or planting purposes without complying with the provisions of this act shall be guilty of a misdemeanor for the first offense and upon conviction shall be fined not less than ten (\$10.00) dollars and the costs of such prosecution, nor more than one hundred (\$100.00) dollars and the costs of such prosecution, or in default in payment thereof shall be imprisoned in the county jail for not less than ten nor more than ninety days.

(b) Upon the second or any subsequent conviction such person shall be guilty of a gross misdemeanor and shall be fined not less than twenty-five (\$25.00) dollars and the costs of such prosecution, nor more than five hundred (\$500.00) dollars and the costs of such prosecution, or in default in payment thereof shall be imprisoned in the county jail for a period not less than thirty nor more than one hundred fifty days. ('27, c. 387, § 10, effective July 1, 1927)

3957-11. Reports of commissioner of agriculture—The commissioner shall make a biennial report to the Governor of this state upon the work performed under this act and shall (make public) publish at least once each year the results of investigations and the examination, analysis and tests of any samples of agricultural seeds or mixtures of same which do not comply with this act, together with any other information regarding any agricultural seed that he may deem advisable. ('27, c. 387, § 11, effective July 1, 1927)

3957-12. Laws repealed—Chapter 141, General Laws 1913, is hereby repealed. ('27, c. 387, § 12, effective July 1, 1927)

Explanatory note—For Laws 1913, c. 141, repealed by this section, see §§ 3946 to 3957, herein.

SOFT DRINKS AND OTHER NON-ALCOHOLIC BEVERAGES.

3958 to 3965... [Repealed.]

These sections (Laws 1921, c. 432) are repealed by Laws 1927, c. 42, § 15. See §§ 3965-1 to 3965-15, herein.

3965-1. Licenses required for manufacture, etc., of soft drinks and other non-alcoholic beverages—Exception—No person shall manufacture, mix or compound any soft drinks or other non-alcoholic beverage, except apple or fruit ciders, natural fruit juices or cereal beverages to be sold in bottles, barrels, kegs, jars, coolers, or other containers without first having obtained a license therefor from the Dairy and Food Commissioner, who is charged with the duty and power of administering and enforcing the provisions of this Act: provided that this Act shall not apply to beverages manufactured, mixed or compounded in quantities of less than one quart at one time. ('27, c. 42, § 1)

3965-2. Inspection by and registration with dairy and food commissioner of soft drinks, etc.—No soft drinks or other non-alcoholic beverages except apple or fruit ciders, natural fruit juices or cereal beverages, not manufactured in this State, shall be sold, offered, exposed, exchanged, or held in possession with intent to sell within this State, unless the same are first inspected and registered with the Commissioner. ('27, c. 42, § 2)

3965-3. Definitions—Wherever used in this Act, the terms "Soft drinks or other non-alcoholic beverages" shall mean and include (a) carbonated or still beverages, (b) natural and mineral waters, carbonated, plain or otherwise, but shall not include apple or fruit ciders, or natural fruit juices, or cereal beverages. ('27, c. 42, § 3)

3965-4. Applications for license—Fee—Issue of license—Any person desiring to manufacture, mix and compound soft drinks or other non-alcoholic beverages, as described in Section 1, hereof, shall apply for a license therefor to the Commissioner in such form and furnish such information as he may require. Each application shall be accompanied by a fee of \$24.00, which shall constitute the license fee in case license is granted, and one-half of which shall be retained to reimburse the State for inspection in case license is refused. If the Commissioner shall find that the applicant maintains a proper place and the equipment and containers necessary for the manufacture of soft drinks and other non-alcoholic beverages, as required by this Act, and otherwise complies therewith, the Commissioner shall issue to the applicant a license therefor. ('27, c. 42, § 4)

3965-5. Registration by non-resident manufacturers—Fee—Certificates of registration—Any person who manufactures soft drinks or other non-alcoholic beverages outside of this State for sale within this State, shall apply for registration with the Commissioner in such form and furnish such information as he may require. Samples of all soft drinks or other non-alcoholic beverages so manufactured for sale and sold within this State shall be submitted. Each application shall be accompanied by a registration fee of \$24.00, which shall constitute the registration fee in case registration is granted, and one-half of which may be retained to reimburse the State for inspection should registration be refused. If the Commissioner shall find that the samples so submitted are up to accepted standards, and otherwise comply with the laws of this state,

then he shall issue to the applicant a certificate of registration. ('27, c. 42, § 5)

3965-6. Fee for license or registration—Life of license or certificate of registration—Penalty for delay in applications—The fee for such license, or certificate of registration shall be \$24.00, and shall expire on the 31st day of March following its issue, and no license or certificate of registration shall be issued for a longer term than one year, and shall not be transferable from one person to another or from the ownership to whom issued to another ownership or from one place to another place or location. Provided, that no manufacturer now licensed under Chapter 432, General Laws of Minnesota for the year 1921, shall be required to apply for a new license until his present license shall expire. And provided further, that a license or certificate of registration issued for a less term than one year, the fee for same shall be computed at the rate of two dollars for each calendar month or fractional part of such month. A penalty of 50 per cent of the license or registration fee shall be imposed if license or certificate of registration is not applied for on or before April 1 of each year, or within the same month such beverages are first manufactured or sold within this State. ('27, c. 42, § 6)

3965-7. Beverage inspection fund—Expenditures from—All fees collected hereunder by the Commissioner, together with all fines paid for the violation of this Act, shall be paid into the State Treasury and credited to the Beverage Inspection Fund, hereby created. The moneys so derived is hereby appropriated to compensate for and meet the expense of inspection and supervision as provided for in this Act. The money so collected and appropriated, known as the Beverage Inspection Fund, shall be expended by the Commissioner for inspection, supervision, publications, short courses, and such other activities as in his judgment may be necessary, not inconsistent with the provisions of this Act. ('27, c. 42, § 7)

3965-8. Suspension or revocation of license or certificate—Hearings—The Commissioner shall have power to suspend or revoke any such license or certificate of registration for failure to comply with the provisions of this Act, or rules and regulations made hereunder, either temporary or permanent, but before any such permanent revocation of license or certificate of registration shall be made, the Commissioner shall serve upon the licensee or certificate holder, by registered letter containing a copy thereof, an order to show cause why the license or certificate of registration should not be permanently revoked, stating the grounds thereof and the time and place of hearing, which time shall not be less than 15 days after the mailing of the order.

At the appointed time and place, and at such times as the matter may be adjourned to, the Commissioner shall hear all proper evidence relating to the cause of the proposed revocation, and within a reasonable time thereafter he shall make and file his decision of the matter, and forthwith mail to the licensee or certificate holder a copy thereof.

The Commissioner may temporarily suspend the license of any licensee for violations of this Act, regulations made hereunder, or the "Minnesota Dairy and Food Law," but no such temporary suspension shall exceed 30 days in which time steps may be taken by the Commissioner for permanent revocation as above provided.

Any person, whose license or certificate of registration has been so suspended or revoked shall discon-

tinue the manufacture of, or sale within this State, of any soft drinks or other non-alcoholic beverages, until the suspension is removed or a new license or certificate is granted. ('27, c. 42, § 8)

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3965-9. Carbonated or still beverages—Adulteration—A carbonated or still beverage within the meaning of this Act, shall be a beverage made of pure cane or beet sugar, with pure water, and pure flavoring materials, with or without fruit acids and harmless coloring materials, and the finished product shall contain not less than seven per centum of sugar and less than 1/2 of one per centum of alcohol by volume. All carbonated or still beverages not conforming to the above requirements, this Act, the Minnesota Dairy and Food Law, or the rules, regulations, definitions and standards made thereunder, shall be deemed to be adulterated. ('27, c. 42, § 9)

3965-10. Sanitary condition of factories, etc.—All factories, rooms and places where soft drinks or other non-alcoholic beverages are manufactured, mixed, compounded and placed in containers shall be well lighted and kept in a clean and sanitary condition; and all machinery, apparatus and utensils used in the manufacture of such beverages shall be kept clean and sanitary and in a clean and sanitary place. ('27, c. 42, § 10)

3965-11. Cleansing of containers—Containers prohibited—Before being filled with such beverages, all bottles, jars and coolers shall be sterilized by soaking for a period of not less than five minutes in a solution of not less than four per centum of caustic soda or alkali, expressed in terms of sodium hydrate, heated to not less than 110 degrees Fahrenheit, and then thoroughly rinsed in pure water until freed from alkali. Jars and coolers, before being re-filled, shall be cleansed and washed as in the manner above prescribed for bottles. When such beverages are marketed in second hand or used barrels, kegs, or other wooden containers, such containers shall be thoroughly cleansed and coated

on the inside with parafin, pitch or other suitable material. No beverages shall be placed in containers known as the "Hutchinson Plunger Bottle," or any container of similar type. ('27, c. 42, § 11)

3965-12. Markings of containers—It shall be unlawful for any person to place his products in bottles or containers bearing any name blown in the glass or appearing thereon other than the true name of the manufacturer. ('27, c. 42, § 12)

3965-13. Enforcement of law by dairy and food commissioner—Laws applicable—The Commissioner, his inspectors, assistants and employes, shall enforce the provisions of this Act, and in so doing shall have all the powers and authority with relation thereto that is conferred upon them and each of them by Chapter 495, General Laws for the year 1921, known as the Minnesota Dairy and Food Law, and the provisions of Sections 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18 of said chapter shall be deemed a part thereof in the enforcement of this Act and accomplishments of its purposes. ('27, c. 42, § 13)

Explanatory note—For Laws 1921, c. 495, see § 3788, et seq., herein. For sections 8 to 18 thereof see §§ 3797 to 3807, herein.

3965-14. Violations of law—Penalty—Any person violating any of the provisions of this Act or of any regulations made hereunder or now in force, shall be guilty of a misdemeanor and be punished by a fine of not less than \$25.00, or by imprisonment in the County Jail for not less than 30 days for the first offense, and in the sum of not less than \$50.00 or by imprisonment in the County Jail for not less than 60 days for each subsequent offense. ('27, c. 42, § 14)

3965-15. Laws repealed—Chapter 432, General Laws of Minnesota for the year 1921, is hereby repealed. ('27, c. 42, § 15)

Explanatory note—For Laws 1921, c. 432, repealed by this section, see §§ 3958 to 3965, herein.

CHAPTER 21A

REGULATION OF CERTAIN MANUFACTURES AND SALES

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3966. Cotton duck or canvas—Definition—That for the purpose of this act cotton duck or canvas shall be deemed to include all cotton duck or canvas, whether single filling, double filling, army roll or wide duck. ('13 c. 167 § 1) [3772]

3967. What constitutes yard—That for the purposes of this act, the equivalent of thirty-six (36) inches in length by twenty-nine (29) inches in width, or seven and one-fourth (7 1/4) square feet of cotton duck or canvas shall constitute a yard, and an ounce

shall be one-sixteenth part of a pound avoirdupois. ('13 c. 167 § 2) [3773]

3968. Manufacture and sale—Stamps, brands and marks—Any person, company or corporation who shall manufacture for sale or who may offer or expose for sale any cotton duck or canvas or any article other than clothing and wearing apparel composed or made in whole or in part of cotton duck or canvas, shall distinctly and durably stamp, brand or mark thereon the true and correct weight of such cotton duck or canvas, by ounces per yard, together with a description by name of any filler or other preparation placed in or on said cotton duck or canvas since its manufacture. ('13 c. 167 § 3) [3774]

3969. Certain sales unlawful—Misstatements, etc.—It shall be unlawful for any person or corporation either individually or in any representative capacity, to carry for sale, sell or endeavor to sell any cotton duck or canvas as herein defined, or any articles other than clothing and wearing apparel, composed or made in

whole or in part of any cotton duck or canvas without having marked thereon the true and correct weight of said canvas or cotton duck by ounces per yard, together with a description by name of any filler or other preparation placed in or on said cotton duck or canvas since its manufacture, or to misstate, misrepresent or conceal the true weight of said canvas or cotton duck by ounces per yard, or to misstate, misrepresent or conceal the existence of any filler or other preparation placed in or on said cotton duck or canvas since its manufacture. ('13 c. 167 § 4) [3775]

3970. Concealing or misstating size unlawful—It shall be unlawful for any person or corporation either individually or in representative capacity, selling, carrying for sale or endeavoring to sell any awnings, paulins, wagon covers, tent, grain and hay covers, stable or tent tops, to misstate or misrepresent or conceal the true and correct size and dimensions thereof. ('13 c. 167 § 5) [3776]

3971. Unlawful to deface mark, etc.—It shall be unlawful for any person to deface, mutilate, obscure, conceal, efface, cancel or remove any mark provided for by this act, or cause or permit the same to be done with intent to mislead, deceive or to violate any of the provisions of this act. ('13 c. 167 § 6) [3777]

3972. Penalty for violation—Any person, company or corporation violating any of the provisions of this act shall be deemed guilty of a misdemeanor and on conviction thereof shall for the first offense be punished by a fine of not less than twenty-five dollars (\$25.00) nor more than fifty dollars (\$50.00) and for each subsequent offense by a fine of not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100.00). ('13 c. 167 § 7) [3778]

3973. Mattresses—Manufacture and sale—Brands and labels—Penalty—Whoever manufactures for sale, offers for sale, sells, delivers, or has in his possession with intent to sell or deliver any mattress which is not properly branded, or labeled or whoever uses, either in whole or in part in the manufacture of mattresses, any cotton, or other material which has been used, or

has formed a part of any mattress, or bedding used in or about public or private hospitals or on or about any person having infectious or contagious diseases or whoever dealing in mattresses, has a mattress in his possession for the purpose of sale, or offers it for sale, without a brand or label as herein provided, or removes, conceals or defaces the brand or label thereon, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars nor more than five hundred dollars, or by imprisonment in the county jail not to exceed six months, or by both such fine and imprisonment. ('13 c. 490 § 1) [3779]

By section 5 the act takes effect January 1, 1914.

3974. Contents of brand or label—The brand or label therein required shall contain, in plain print in the English language, a statement of the material used in the manufacture of such mattresses, whether such materials are, in whole or in part, new or second-hand, and the quality of the materials used. Such brand or label shall be in the shape of a cloth tag to be sewed or otherwise securely attached to each such article. ('13 c. 490 § 2) [3780]

3975. What included—Construction of term "mattress"—A mattress within the meaning of this section shall include a quilted pad, stuffed with hair, wool or other soft material, except feathers, to be used on a bed for sleeping or reclining purposes. ('13 c. 490 § 3) [3781]

3976. Duties of commissioner of labor, attorney general, etc.—When the commissioner of labor shall have reason or cause to believe that any of the provisions of this section are being or have been violated, such commissioner shall advise the attorney-general thereof, giving the information in support of such belief, and the attorney-general, or, under his directions, the prosecuting attorney of any county in which the violation occurs, shall forthwith institute the proper legal proceedings for the enforcement of the provisions of this section and for the punishment of the violation thereof. ('13 c. 490 § 4) [3782]

CHAPTER 21B

REGULATION OF [SALE OF] STOCKS, BONDS AND OTHER SECURITIES [AND OIL OR GAS LANDS, INTERESTS THEREIN, OR ROYALTIES THEREFROM].

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3977-96 Repealed 227nw 652
 3977Eseq. Repealed 227nw 652 228nw 757
 3977 to 3980. [Repealed, except as to pending proceedings.]

These sections, consisting of Laws 1917, c. 429, as amended by Laws 1919, c. 105, Laws 1919, c. 257, Laws 1921, c. 372, Laws 1921, c. 426, Laws 1923, c. 4, and Laws 1923, c. 271, are repealed by Laws 1925, c. 192, § 28, as amended by Laws 1927, c. 66, § 14. See § 3996-28, herein.
 The revolving fund created by Laws 1917, c. 429, § 5, as amended by Laws 1919, c. 105, § 6, is, however, perpetuated by said Laws 1925, c. 192, § 28, as amended.

Department of Commerce with securities division and commissioner of securities; state securities commission abolished. See §§ 53-28 to 53-32, herein. Administration of this act by Department of Commerce and the commission thereof. See § 53-30, herein.

The title of Laws 1917, c. 429 was amended by Laws 1919, c. 105, § 1, to read as follows: "An act to prevent frauds in the sale and disposition of stocks, bonds or other securities sold or offered for sale within the state of Minnesota, providing for the enforcement thereof and for prosecutions and penalties for the violations thereof, and creating a state securities commission."

Annotations to § 3977.

160-64, 199+436; 162-351, 202+737.

A contract, termed an "operator's agreement," whereby the operator advanced money and furnished services, for which he was to be paid, and whereby he was to have a share of profits, and eventually stock, in a corporation in process of organization to operate a bus line, was an investment contract. 164-455, 205+370.

The evidence sustains the findings of fact that the money sought to be recovered of defendant was not parted with in consideration of the certificate declared on in the complaint as being sold and issued in violation of Blue Sky Law. 211+961.

Annotations to § 3978.

The purchaser of an investment contract, issued and sold in violation of chapter is not in pari delicto with the seller, and may recover the money paid thereon. 212+806.

Contract issued by a corporation under the Blue Sky Law, held to be an investment contract and illegal. 212+806.

Stockholder in an insolvent corporation is liable to the purchaser for money paid on such illegal contract. 212+806.

Annotations to § 3979.

Investment contracts or securities. 191+426; 193+700.

Annotations to § 3980.

A stockholder cannot defend against an assessment on his constitutional liability, on the ground that his stock was sold to him in violation of the "Blue Sky" Law. 164-305, 204+941.

The district court did not acquire jurisdiction over the defendants by delivery of the summons to the public examiner, where the cause of action arose in a foreign country and bore no relation to the subject-matter of chapter. 165-95, 205+694.

3981. \$1,000 revolving fund created—All fees and charges collected by the commission shall be covered into the state treasury and credited to the state securities commission fund.

Provided, that there is hereby created a revolving fund of \$1,000.00 to be advanced from the state treasury on auditor's warrant, any part or all of which fund may be used for the purpose of defraying the expense of travel on business of the commission and the expenses which may be incurred under Section 7 of this act. ('17 c. 429 § 5, amended '19 c. 105 § 6)
 See notes to §§ 3977 to 3980, ante.

3982 to 3996. [Repealed, except as to pending proceedings.]
 See notes to §§ 3977 to 3980, ante.

Annotations under § 3983.

152-483, 180+461.
 Following State v. Evans (Minn.) 191 N. W. 425, it is held, that a transaction similar to the one there considered was in contravention of the Blue Sky Law and could not be made the foundation of a valid contract. 157-72, 196+672.

The purchaser of an investment contract issued and sold in violation of the Blue Sky Law is not in pari delicto with the seller and may recover from him all the money he paid under the contract. 157-72, 196+672.

The purchaser of such a contract got nothing of value when he parted with his money, and has nothing to restore as a condition precedent to a recovery. 157-72, 196+672.

Annotations under § 3991.

Blue sky law did not repeal §§ 7436 to 7439, herein.

3996-1. Definitions—When used in this act the following words shall have the following respective meanings, unless the context otherwise requires:

(1) "Person" shall mean and include a natural person, firm, co-partnership, association, syndicate, joint stock company, unincorporated company or organization or association, trust, trustee of a trust, a corporation organized under the laws of any state or of the United States or of any territory or possession thereof or of the District of Columbia or of any foreign government. The term "trust" as herein used shall not include a trust created or appointed under or by virtue of a last will and testament, or by a court of law or equity, or a public charitable trust.

(2) "Sale," "sell" or "sold" shall mean and include any disposition for value, an offer to sell, a solicitation of a subscription or sale, or an attempt to sell in any manner whatsoever, an option of sale, a subscription, a pre-organization subscription or certificate, a re-organization subscription or certificate, an agreement to issue or transfer, an exchange, pledge, hypothecation or any transfer in trust or otherwise by way of mortgage. Any security given or delivered as a bonus with any sale of securities, as such sale is herein defined, or with any other thing, shall be conclusively presumed to constitute a part of the subject of such sale and to have been sold for value. Provided, however, that the sale of a security under conditions which entitle the purchaser or subsequent holder to exchange the same for, or to purchase, some other security shall not be deemed a sale or offer for sale of such other security; but no exchange for or purchase of such other security shall ever be made unless and until the sale thereof shall have been first authorized in Minnesota by registration under this act, or by exemption therefrom, or by other provisions of law.

(3) "Security" shall mean and include any stock, share, bond, note, debenture, commercial paper, evidence of indebtedness, investment contract. Interest in or under a profit sharing or participating agreement or scheme, or beneficial interest in a trust or

3996-1
 19-105 § 7
 228nw 757
 3996-1-28
 178m 492
 227nw 652
 240nw 456
 See
 3997-4000
 33-326R
 33-418
 3990-4000
 249nw 670

3980R
 232nw 523

pretended trust. Any interest in any security shall be deemed a security.

(4) "Broker" shall mean and include every person, other than an agent, who sells directly or through an agent, in the course of continued and successive sales, any securities of which he is not the issuer. "Broker" shall also include every person, other than an agent, who engages, or professes to engage, either for all or part of his time, directly or through an agent, in the business of purchasing or otherwise acquiring any securities of which he is not the issuer for another or for the purpose of reselling the same to others, or of accepting and executing buy and sell orders for such securities for a commission, or of buying, selling, or otherwise dealing or trading in such securities.

(5) "Issuer" shall mean and include every person who proposes to issue, has issued, or shall hereafter issue any securities.

(6) "Agent" shall mean and include every person, other than a broker, employed, appointed or authorized, by an issuer or broker to sell securities. The term "agent" shall not include the partners of a partnership or officers of a corporation or association licensed as a broker or for whom securities are registered; provided that the term "officers" as used in this paragraph shall not include the directors of a corporation.

(7) "Commission" shall mean the commission supervising and controlling the department of commerce of the State of Minnesota under Chapter 426, Laws 1925, but subject to all the provisions thereof relating to the powers and duties of the commissioner of securities as successor of the state securities commission. Wherever necessary to give effect to such provisions, the term "commission" as used in this act may be construed as meaning or including such commissioner of securities under said Chapter 426, Laws 1925. Said commission, for the purposes of this act, shall be known as the commerce commission.

(8) "Investor" as used in this act shall mean and include any person (as above defined) to whom any security (as above defined) is sold or offered for sale (as above defined), or who purchases or acquires or attempts to purchase or acquire any such security. ('25, c. 192, § 1; amended '27, c. 66, § 2)

Explanatory note.—The title of Laws 1925, c. 192, read as follows: "An act to prevent fraud in the sale of securities within the State of Minnesota by regulating the offer of sale and sale thereof, by requiring registration of such securities and licensing of persons selling or offering securities for sale, by perpetuating the state securities commission and empowering and requiring it to administer and enforce this act, by providing penalties for violation thereof, and by repealing other laws and parts of laws relating to the same subject matter or inconsistent with the provisions of this act." This title was amended by Laws 1927, c. 66, § 1, to read as follows: "An act to protect investors, as hereinafter defined by regulating sales and purchases, and attempted sales and purchases, within the State of Minnesota, of stocks, bonds, notes, debentures, commercial paper, evidence of indebtedness, investment contracts, interests in or under profit-sharing or participating agreements or schemes, and interests in trusts or pretended trusts, all hereinafter called securities; by defining words, phrases, and terms used in this act; by fixing the scope of the regulation in this act provided and prescribing the conditions under which securities may be sold, bartered, or exchanged or offered therefor; by providing for enforcement of this act through public agencies and otherwise; and by prescribing and imposing penalties for violation of or non-compliance with this act."

See, also, note to §§ 3977 to 3980, 3981, 3982 to 3996, ante.

3996-2. Securities exempted from operation of certain provisions of law—Co-operative associations included.—The provisions of Sections 4, 5, 6 and 7 of this act, with respect to the registration of securities, shall not apply to the following securities:

(1) Any security issued or guaranteed by the United States or by any state or territory or insular possession thereof, or by the District of Columbia, or by any political subdivision or agency of a state, territory, or insular possession, having the power of taxation or assessment.

(2) Any security issued or guaranteed by any foreign government with which the United States is at the time of the sale thereof maintaining diplomatic relations, or by any state, province or political subdivision thereof having the power of taxation or assessment.

(3) Any security issued by and representing an interest in, or issued by and representing a direct obligation of, a state bank organized and operating under the laws of Minnesota; and any security issued by a national bank or by a corporation or governmental agency created or existing by an act of the Congress of the United States other than corporations created or existing under the code of laws for the District of Columbia or under the code of laws for any territory or possession of the United States, provided that such corporation is subject to supervision or regulation by the Government of the United States.

(4) Any security issued or guaranteed either as to principal, interest or dividends, by a railroad or public service utility, which is subject to regulation or supervision either as to its rates and charges or as to the issue of its own securities by a public service commission, or any board, body or official having like powers, of the United States or of any state or territory or insular possession of the United States, or of the District of Columbia, and all securities senior thereto; also equipment notes, bonds or trust certificates, based on chattel mortgages, leases, or agreements for conditional sale, of cars, motive power or other rolling stock mortgaged, leased or sold, to or furnished for the use of any railroad or public service utility, and equipment notes, bonds or trust certificates where the ownership of title of such equipment is pledged or retained in accordance with the provisions of the laws of the United States or of any state, or of the Dominion of Canada, to secure the payment of such equipment notes, bonds or trust certificates; provided that such railroad or public service utility is subject to regulation or supervision either as to its rates and charges or as to the issue of its own securities by a public service commission, or any board, body or official having like powers, of the United States or of any state or territory or insular possession of the United States, or of the District of Columbia.

(5) Securities listed on the New York Stock Exchange, Boston Stock Exchange, and the Chicago Stock Exchange, which securities have been so listed pursuant to official authorization by such exchange, and all securities senior to any securities so listed, subscription rights so listed, or evidences of indebtedness guaranteed by companies any stock of which is so listed, such securities to be exempt only so long as such listing shall remain in effect.

(6) Commercial paper or negotiable promissory notes, maturing within six months from the date of issue.

(7) Any security issued by a corporation organized under the laws of this state exclusively for social, religious, educational, benevolent, fraternal, charitable or reformatory purposes, and not for pecuniary gain, and no part of the net earnings of which inures to the benefit of any private stockholder or individual.

(8) Policy contracts of insurance companies licensed to do business in this state.

(9) Any security issued by a building and loan association organized under the laws of this state.

(10) Securities of any co-operative association organized in good faith under the laws of this state exclusively for the purpose of conducting upon the co-operative plan among its members, stockholders and patrons any or all of the following businesses: Any agricultural, dairy, livestock or produce business; the business of selling, marketing or otherwise handling, any agricultural, dairy, or livestock products, or other produce, raised or produced by the members, stockholders and patrons of such association, or by any co-operative association; the manufacture of anything from any agricultural, dairy or livestock products, or other produce, produced by the members, stockholders and patrons of such association; any business incidental to any of the above purposes; the operation of a rural telephone among its stockholders. Except as last hereinabove provided otherwise, all co-operative associations organized or existing under Chapter 326, Session Laws of Minnesota for 1923, shall be deemed within the purview of this act; and any provision to the contrary in said Chapter 326, Laws 1923, is hereby repealed. ('25, c. 192, § 2; amended '27, c. 66, § 3)

Explanatory note—For sections 4, 5, 6 and 7 of this act see §§ 3996-4 to 3996-7, herein.

For Laws 1923, c. 326 see §§ 7834 to 7847, herein.

3996-3. Sales excepted from operation of law—The provisions of this act, except as herein expressly provided, shall not apply to sales of the following character:

(1) Any isolated sales of any securities by the issuer or owner thereof, or by a representative for the account of such issuer or owner, such sales not being made in the course of repeated and successive sales of securities of the same issue by such issuer or owner or by such representative for the account of such issuer or owner. This exception shall not be deemed to exempt a broker or a broker's agent from the requirement of obtaining a license as herein provided.

(2) Any sale of notes or bonds secured by a mortgage lien when the entire lien, together with all notes or bonds secured thereby, are sold to a single purchaser at a single sale.

(3) Any judicial sale, or the sale by an executor, administrator, receiver, guardian, or trustee appointed by the decree of any court.

(4) The distribution by a corporation of capital stock, bonds or other securities, to its stockholders or other security holders or their respective assigns, as a stock dividend or other distribution out of earnings or surplus; or an increase of capital stock of a corporation sold only to its stockholders and without payment of any commission or expense to any broker or agents in connection with such distribution.

(5) Any subscription for securities prior to the incorporation of the issuer thereof, when no cash or other consideration is paid by, or agreed to be paid by, the purchaser prior to the registration of the securities; provided, that all such subscriptions are expressly conditioned upon the registration of such securities within one year from the date of such subscription, and otherwise to be null and void.

(6) The sale, by a pledge holder or mortgagee selling in the ordinary course of business at public or private sale of a security pledged with him in good faith as a security for a bona fide debt.

(7) The sale to any bank, savings institution, trust company, insurance company or licensed broker. ('25, c. 192, § 3; amended '27, c. 66, § 4)

3996-4. Securities registered before sale—Application or notice—No securities shall be sold within the State of Minnesota unless or until such securities have been registered as herein provided.

Registration may be secured by application for registration as provided in Section 5 hereof, or by notification as provided in Section 6 hereof. Such applications or notifications may be made by the issuer or any licensed broker and may pray that the registration be made for the applicant only, or for the applicant and any designated licensed brokers. ('25, c. 192, § 4; amended '27, c. 66, § 5)

Explanatory note—For sections 5 and 6 see §§ 3996-5, 3996-6, herein.

3996-5. Registration by application—Grant or denial—Entry on Register of Securities—Applications for registration of any securities subject to the provisions of this act shall be made to the commission on forms prescribed by the commission, which application shall be signed and sworn to by the applicant and shall contain such information relative to the securities covered by such applications as the commission may deem necessary to enable it to determine whether such securities shall be registered.

The commission shall have power, in connection with pending applications for registration, to require the applicant to furnish in such form as it shall designate any additional information necessary to enable it to properly pass on the application before it; to order an appraisal, audit or such other expert or technical examination and report as may seem necessary; and, where the applicant is the issuer of the securities, or is selling same for the issuer as broker, to make an investigation of the books, records, property, business and affairs of such issuer.

Upon compliance with all the provisions of this act applicable to such application and the requirements of the commission, the commission shall either register such securities or deny the application. The commission shall have power to place such conditions, limitations and restrictions on any registration as may be necessary to carry out the purposes of this act. Registration shall be by entry in a book called "Register of Securities," which entry shall show the securities registered and for whom registered, and the conditions, limitations and restrictions, if any, or shall make proper reference to a formal order of the commission on file showing such conditions, limitations and restrictions. A registration shall be made only for those on whose behalf application therefor was made, and shall authorize each of those for whom such registration was made to sell all or any portion of the securities so registered. A registration or registrations shall be good until exhausted by the sale of the securities so registered, or until suspended, canceled or revoked, as hereinafter provided. The commission shall have power to deny an application for registration if the securities are fraudulent or if it appears to the commission that the sale thereof would work a fraud on purchasers thereof, or if the applicant has violated any of the provisions of this act, or any registration or lawful order of the commission, or for good cause appearing to the commission. Denial shall be by written order. ('25, c. 192, § 5)

3996-6. Registration by notification—Form and contents of notice—Securities registerable by notification—Whenever any securities required to be registered

3996-4
Et seq
250nw 563
252nw 217
3996-22

3996-1
174m 200
219nw 81

3996-3
227nw 652
3996-3
178m 492

by the provisions of this act fall within any of the following subsections of this section, any person entitled to have same registered may, in lieu of making application for registration as provided in Section 5 hereof, notify the commission of his intention to sell such securities, which notification shall be on forms prescribed by the commission, shall be signed and sworn to by the person giving the notice, and shall contain the following information:

- (a) Name of issuer.
- (b) Amount of issue and amount covered by the notification.
- (c) Statement that the securities fall within a designated subsection of this section.
- (d) A descriptive circular or statement briefly describing the securities.
- (e) The price at which the securities are to be sold.
- (f) Names of the issuer or licensed brokers, if any, on whose behalf the notification is given.

The commission shall, for a period of twenty-four (24) hours only from and after the receipt of any such notification accompanied by the proper fee as provided in Section 17, have the same powers on such notifications as it has on applications for registrations, and the same powers to deny the registration or to register the securities. Failure of the commission to take any formal action on a notification within said twenty-four (24) hour period shall constitute a registration, subject to the terms of the notification, for those on whose behalf the notification was given.

The securities which may be submitted by notification of intention to sell are as follows:

Subsection 1. Any notes or bonds secured by a first mortgage or deed of trust upon real estate or leaseholds on real estate (not including oil, gas or mining property) situated in any state or territory of the United States or in the District of Columbia or in the Dominion of Canada.

(a) When the mortgage is upon agricultural lands used and valuable principally for agricultural purposes and the aggregate face value of the notes or bonds covered by such notification together with all notes or bonds already outstanding and equally secured by such mortgage does not exceed 70 per centum of the then fair market value of said lands, including any improvements appurtenant thereto.

(b) When the mortgage is upon city or village real estate or leaseholds and the aggregate face value of the notes or bonds covered by such notification together with all notes or bonds outstanding and equally secured by such mortgage does not exceed 70 per centum of the then fair market value of said real estate or leaseholds, including any improvements appurtenant thereto, and when said mortgaged property is used principally to produce through rental a net annual income, after deducting operating expenses and taxes, or has a fair rental value after deducting operating expenses and taxes, at least equal to the annual interest on such aggregate face value of notes or bonds plus not less than 3 per centum of the principal of said mortgage indebtedness.

(c) When the mortgage is upon city or village real estate or leaseholds upon which real estate or leaseholds a building or buildings is or are about in good faith forthwith to be erected according to the expressed terms of the mortgage and when reasonably adequate provision has been made for financing the full completion of said building free and clear of any lien superior to said mortgage, and the aggregate face value

of the notes or bonds covered by such notification together with all notes or bonds outstanding and equally secured by such mortgage does not exceed 70 per centum of the fair market value of such mortgaged property, including the building or buildings to be erected thereon as aforesaid, and when said mortgaged property is to be used principally to produce through rental a net annual income, after deducting operating expenses and taxes, or will have a fair rental value after deducting operating expenses and taxes, at least equal to the annual interest on such aggregate face value of notes or bonds plus not less than 3 per centum of the principal of said mortgage indebtedness.

Subsection 2. Securities issued by any person owning a property, business, or industry which has been in continuous operation not less than five years, and which has shown during a period of not less than three years or more than ten years next prior to the close of its last fiscal year preceding the offering of such securities, average annual net earnings, after deducting all prior charges, not including the charges upon securities to be retired out of the proceeds of sale, and assets (not including patents, copyrights, secret processes, formulas, good will, trade-marks, trade brands, franchises, and other like intangible property), as of the date of the close of its last fiscal year preceding the offering of such securities, together with the proceeds of the sale of such securities accruing to the issuer as follows:

(a) In the case of interest-bearing securities, not less than one and one-half times the annual interest charge thereon and upon all other outstanding interest-bearing obligations of equal rank, and assets at least equal to 125 per centum of the face value of such interest-bearing securities, and all other obligations of equal or prior rank outstanding and not to be retired out of the proceeds of the sale of such securities.

(b) In the case of preferred stock, not less than one and one-half times the annual dividend on such preferred stock and on all other outstanding stock of equal rank, and assets at least equal to 125 per centum of the par value of the aggregate amount of such preferred stock and all other outstanding preferred stock of equal rank, after the deduction from such assets of all indebtedness, which will be existing and all stock of senior rank which will be outstanding after the application of the proceeds of the preferred stock offered for sale.

(c) In the case of common stock, not less than 6 per centum upon all outstanding common stock of equal rank, together with the amount of common stock then offered for sale, all reckoned upon the price at which said stock is then offered for sale or sold.

For the purpose of registering under this subsection securities of any issuer owning more than 50% of the outstanding voting stock of a subsidiary company, such issuer shall be deemed to be the owner of the business of the subsidiary company, and the earnings of the subsidiary company applicable to the payment of dividends upon all stock of the subsidiary company owned by such issuer shall be considered as earnings of such issuer. ('25, c. 192, § 6; amended as to subs. 2 by '27, c. 66, § 6)

Explanatory note—For sections 5 and 17 see §§ 3996-5, 3996-17, herein.

3996-7. Additional registrations—Any issuer of registered securities for whom such registration was not made, and any licensed broker for whom any registration was not made, may, provided such registration is

still in effect, serve notice on the commission of his intention to sell such registered securities or a portion thereof. Such notice must be in writing or by telegram, and when actually received by the commission shall constitute a registration of the securities for the person giving the notice. Such notice may be served as to securities to be registered and shall constitute a registration for the person giving the notice only upon the actual registration of the securities as in this act otherwise provided. No fees shall be paid on such notices. The notice herein provided for shall not be construed to apply to an intention to sell a block of securities of the same issue as those covered by a registration, which block is not a part of such registered securities but in addition thereto. Where a block of securities is registered for more than one person each and every registration shall be exhausted when the total amount so registered has been sold under one or more of the registrations. ('25, c. 192, § 7)

3996-8. Information to commission by registrants—Powers as to investigations, examinations, etc.—Cancellation or revocation of registrations—The commission shall have power in connection with any registration of any securities, which is not canceled or revoked, to require the person for whom such registration was made to furnish to the commission in such form as it may designate any information deemed necessary to assist the commission in determining whether such registration should remain in force, whether such securities are fraudulent, whether the sale thereof has worked or will work a fraud on purchasers, or whether such person has violated or is about to violate such registration or any lawful order of the commission or any of the provisions of this act. In such case the commission shall also have power to make an examination and investigation of the books, records, papers, accounts, property, business and affairs of such person and to make or cause to be made on its behalf an audit of the accounts, books and records of such person, and by its order to require such person to permit such examination, investigation and audit to be made and to require such person to submit to the commission his books, papers, records and accounts for the purpose of such examination, investigation and audit. If a registration has been made for a broker acting under a fiscal agency contract or other authority from the issuer, the commission shall have the same powers as against such issuer.

Whenever the commission is in possession of information indicating that any registered security is fraudulent or that the further sale thereof would work a fraud on purchasers, or that the person for whom a registration was made has violated or is about to violate the registration or any lawful order of the commission or any of the provisions of this act or for good cause appearing to the commission, it may issue its order requiring such person to show cause before the commission why such registration should not be revoked. In any such order the commission shall fix the time and place for hearing thereon not less than ten nor more than thirty days from the date of such order, and at which time and place a full hearing shall be had. A registration may be suspended pending the final determination of any order to show cause, during which suspension it shall be unlawful to sell such securities. After such hearing the commission shall enter its order either vacating the order to show cause and suspension, or modifying the terms of the registration, or permanently revoking the registration or

making such other disposition of the matter as the facts require.

A registration may be canceled by the commission in its discretion at any time at the request of the person for whom such registration was made. All suspensions, revocations and cancellations, shall be entered on the Register of Securities. ('25, c. 192, § 8; amended '27, c. 66, § 6½)

3996-9. Brokers — Licenses — Applications — Issuance or denial—Duration—Information; examinations, etc.—Cancellation, suspension or revocation of licenses—No broker shall sell or profess the business of selling, any securities unless or until he shall have been licensed as a broker as hereinafter provided.

To secure a broker's license application shall be made to the commission on forms prescribed by said commission, which application shall be signed and sworn to by such applicant and shall contain, in addition to other information which the commission may require, applicant's name and address or addresses at which the business is to be conducted, the names and addresses of all officers of the applicant, if a corporation, and of all persons interested in said business, if a partnership or unincorporated association, and a statement of the business to be transacted. The commission shall have power, in connection with applications for brokers' licenses, to require applicant to furnish in such form as it shall designate any additional information deemed necessary to enable it to properly pass on the application before it; to order an appraisal, audit, or such other expert or technical examination and report as may seem necessary; and to make an investigation of the books, records, property, business and affairs of such applicant.

Upon compliance by an applicant for a broker's license with the provisions of this act and the requirements of the commission, the commission shall either issue a license as prayed, or deny the application. The commission shall have power to deny if the applicant is not solvent, is of bad business repute, has violated any of the provisions of this act, or any registration, license or lawful order of the commission, or has engaged in or is about to engage in any fraudulent transaction, or if it appears to the commission that the sale of securities by such applicant would work a fraud on purchasers thereof, or for good cause to the commission appearing. Denial shall be by written order.

Brokers' licenses shall be good for one year from date of issuance, unless sooner suspended, canceled or revoked, as hereinafter provided, and shall authorize the licensee therein named to transact business as a broker as herein defined and subject to provisions of this act.

The commission shall have power in connection with any broker's license which is not revoked or canceled to require the licensee to furnish to the commission in such form as it may designate any information deemed necessary to assist the commission in determining whether such license should remain in force, whether such licensee is solvent, whether such licensee has violated or is about to violate any of the provisions of this act or any registration, license or lawful order of the commission, has sold or is about to sell any fraudulent securities, has engaged in or is about to engage in any fraudulent transaction, or whether the sale of securities by such licensee will work a fraud on purchasers.

In such case the commission shall also have power to make an examination and investigation of the books,

records, papers, accounts, property, business and affairs of such licensee and to make or cause to be made on its behalf an audit of the accounts, books and records of such licensee, and by its order to require such licensee to permit such examination, investigation and audit to be made, and to require such licensee to submit to the commission his books, papers, records and accounts for the purpose of such examination, investigation and audit. Whenever the commission is in possession of information indicating that the licensee is not solvent, is of bad business repute, has violated or is about to violate any of the provisions of this act, or any registration, license or lawful order of the commission, has engaged in or is about to engage in any fraudulent transaction, or that the sale of securities by such licensee would work a fraud on purchasers thereof, or for good cause appearing to the commission, it may issue its order requiring such licensee to show cause why his license should not be revoked. In any such order the commission shall fix the time and place for hearing thereon, at which time a hearing shall be had. Any license may be suspended pending the final determination of any order to show cause, during which suspension it shall be unlawful for such licensee to transact any business as a broker. After the hearing the commission shall enter its order vacating such order to show cause and suspension, or permanently revoking the license, or making such other disposition of the matter as the facts require.

A broker's license may be canceled by the commission at any time at the request of the licensee. ('25, c. 192, § 9; amended '27, c. 66, § 7)

3996-10. Agents — Licenses — Applications — Issuance or denial—Information furnished—Duration—Revocation, suspension or cancellation—No agent shall sell any securities unless or until he shall have been licensed as hereinafter required; provided that this section shall not apply to an agent of an issuer selling securities exempted under Section 2 of this act, or selling securities in a manner exempted under Section 3 of this act.

Agents' licenses shall be issued only to agents of issuers for whom securities are registered or to agents of licensed brokers.

To secure such license applications shall be made to the commission on forms prescribed by the commission, which application shall be signed and sworn to by the person desiring such license, shall contain the applicant's address, and such other information as the commission may require, and shall be accompanied by a statement signed by the issuer or broker for whom such applicant is agent stating that such issuer or broker has appointed the person therein named as his agent. The commission shall have power to require the applicant or his principal to furnish such additional information regarding the agent as may seem necessary. Such application shall either be granted and license issued, or denied. The commission shall have power to deny an agent's application if the applicant is not of good business repute or has violated any of the provisions of this act, or any registration, license or lawful order of the commission, or has engaged in any fraudulent transactions, or if it appears to the commission that the sale of securities by such applicant would work a fraud on purchasers thereof, or for good cause appearing to the commission. Denial shall be by written order. Agents' licenses shall be good for one year from date of issuance, unless sooner canceled, suspended or revoked, and shall authorize the

licensee therein named to do anything his principal is authorized to do.

The commission shall have power, in connection with any agent's license outstanding, to require the agent or the issuer or broker for whom such agent was licensed, to furnish to the commission in such form as it may designate, any information deemed necessary to assist the commission in determining whether such license should remain in force. Whenever the commission is in possession of information indicating that any licensed agent is not of good business repute, has violated or is about to violate any of the provisions of this act, or any regulation, license or lawful order of the commission, or has engaged or is about to engage in any fraudulent transaction, or that the sale of securities by such licensee would work a fraud on purchasers thereof, or for good cause appearing to the commission, it may issue its order requiring such licensee to show cause why his license should not be revoked. In any such order the commission shall fix the time and place for hearing thereon, at which time a hearing shall be had.

Any agent's license may be suspended pending the final determination of any order to show cause, during which suspension it shall be unlawful for such licensee to act as such agent. After the hearing the commission shall enter its order vacating such order to show cause and suspension, or permanently revoking the license, or making such other disposition of the matter as the facts require.

On any matter pertaining to an agent's license, the issuer or broker for whom such agent was appointed shall be deemed an interested party. Failure to secure an agent's license shall be deemed a violation of this act by both the issuer or broker and the agent.

An agent's license may be canceled by the commission at any time at the request of either the issuer or broker for whom such agent was licensed, or the agent. ('25, c. 192, § 10; amended '27, c. 66, § 8)

Explanatory note—For section 2 see § 3996-2, herein.

3996-11. Agents for service of process — Appointment by non-resident registrants or licensees—Every non-resident person shall, before having any securities registered or being licensed as a broker or agent, appoint the chairman of the commission, and his successor in office, his attorney, upon whom process may be served in any action or proceeding against such person or in which such person may be a party, in relation to or involving any transaction covered by this act, which appointment shall be irrevocable. Service upon such attorney shall be as valid and binding as if due and personal service had been made upon such person. Such service shall be by duplicate copies, one of which shall be filed in the office of the commission and the other immediately forwarded by registered mail to the person so served at the address on file with the commission. Provided, that any such appointment shall become effective upon the registration of the securities or the issuance of the license in connection with which such appointment was filed. ('25, c. 192, § 11)

3996-12. Hearings by commission—On all lawful orders of the commission, made without a hearing having been had on the matter thereby determined, or opportunity therefor afforded, the interested person shall have the right within thirty days from the date thereof to demand a hearing on such matter. On any such demand it shall be the duty of the commission to fix a date for a hearing not more than thirty days from

the date of such demand. At the time set a hearing shall be had, after which the commission shall make such further order as the facts require and may either vacate, modify or adhere to, the order theretofore made. ('25, c. 192, § 12; amended '27, c. 66, § 9)

3996-13. Orders of commission—Service—All lawful orders of the commission may be served by mailing a true and correct copy thereof by registered mail addressed to the interested person at the address on file with the commission. Any person may, by notice to the commission in writing, change his address on file, after which notice service shall be to the address last furnished. Service made as herein provided shall be deemed sufficient for the purposes of this act. ('25, c. 192, § 13)

3996-14. Deposits for examinations, etc.—Fund—Disbursements from—Refunds—Field examinations—Whenever it is necessary for the commission to incur any expense in connection with any application, notification, registration or license, it shall have the power by written order to require the interested person to make an advance deposit with the commission in an amount estimated as sufficient to cover such expense. All such deposits shall be covered into the state treasury and credited to the "State Securities Commission Investigation Fund," from which fund the commission shall have power to make disbursements to pay such expenses. Any unexpended portion shall be refunded. On field examinations made by a commissioner or employe away from the seat of government a per diem pro rated upon the salary of such commissioner or employe may be charged in addition to the actual expenses. ('25, c. 192, § 14)

3996-15. Advertising matter—Regulations—No person shall himself or by or through others, or as agent or otherwise, publish, circulate, distribute, or cause to be published, circulated, or distributed, in any manner, any circular, prospectus, advertisement, printed matter, document, pamphlet, leaflet or other matter, containing or constituting an offer to sell any securities which have not been registered as herein provided.

No circular, prospectus, advertisement, printed matter, document, pamphlet, leaflet or other matter (hereinafter referred to as advertising matter) containing or constituting an offer to sell any securities which have been registered in compliance with the provisions of Section 5 hereof, shall be published, circulated, distributed, or caused to be published, circulated or distributed, in any manner, unless and until such advertising matter shall have been submitted in duplicate to the commission and approved by it. The commission shall have power to disapprove any such advertising matter which it deems in conflict with the purposes of this act.

All such advertising matter containing or constituting an offer to sell any securities which have been registered in compliance with the provisions of Section 6 hereof shall be filed within forty-eight (48) hours after the initial publication, circulation, or distribution thereof. Provided, that the commission shall have power by order to prohibit the publication, circulation, or distribution, of any such advertising matter which it deems in conflict with the purposes of this act, after the service of which order it shall be unlawful for such advertising matter to be published, circulated or distributed.

All such advertising matter shall carry the name and address of the issuer or broker circulating, publishing or distributing same, and shall make no refer-

ence to the registration of the securities or the issuance of a license by the commission.

The provisions of this section shall not apply to securities exempted under Section 2 of this act, nor to sales of securities made in a manner exempted under Section 3 of this act. ('25, c. 192, § 15; amended '27, c. 66, § 10)

Explanatory note—For sections 2, 3, 5, 6 see §§ 3996-2, 3996-3, 3996-5, 3996-6, herein.

3996-16. False statements or misleading acts—No person shall knowingly subscribe to, make or file, or cause to be subscribed to, made or filed, any statement, information or proof required by this act or by the commission, which is in whole or in part materially false, nor shall any person knowingly make or cause to be made any false entry in any book or record of any person making application for registration or license or for whom securities have been registered or who has been licensed, nor exhibit any paper, document, book or record to any person authorized to examine same for the purpose of deceiving or misleading such person or the commission. ('25, c. 192, § 16)

3996-17. Fees—The following fees shall be paid to the commission:

(1) On application for registration, \$1.00 per \$1,000 on the total proposed sale price of the securities covered by such application; provided, that the minimum fee shall be \$25.00, and the maximum fee \$500.00.

(2) On notification of intention to sell, 50c per \$1,000 on the total proposed sale price of the securities covered by such notification; provided, that the minimum fee shall be \$10.00 and the maximum fee \$100.00.

(3) On application for brokers' licenses, \$50.00.

(4) On application for agents' licenses, \$5.00.

No application or notification of intention to sell shall be given any effect until the proper fee is paid. All fees and charges collected by the commission shall be covered into the state treasury. ('25, c. 192, § 17)

3996-18. Certificates and certified copies—Fees—Prima facie evidence—Orders or licenses in duplicates—The commission is hereby vested with power to prepare and issue the following:

(1) Certified copies of any order of registration, or of any license, or of any lawful order of the commission. Any such certificate may recite that such registration, license, or lawful order has not been suspended, revoked, cancelled, or amended except as therein stated.

(2) Any certificate to the effect that the records of the commission show that a specified security was or was not registered, or that a specified person was or was not licensed, on a specified date or between specified dates.

(3) Certified copies of any application, document, exhibit, report, or other paper on file with the commission.

All certificates issued pursuant to the above specified clauses (1), (2), and (3) shall be signed by a commissioner and identified by an impression of the seal of the commission. The commission shall charge fifty cents for each such certificate and ten cents per folio for all copies so certified. All such certificates shall be prima facie evidence of the facts therein stated; and all copies so certified shall be received in evidence in all courts with the same force and effect as the originals thereof.

The commission may issue any order or license in duplicate, both of which shall have the force and effect of originals. ('25, c. 192, § 18)

3996-19. Investigations—Powers of commission— Searches and seizures—Arrests and prosecutions—

Duties of county attorneys—Witnesses, books, papers, etc.—Privilege of witnesses—Whenever the commission from information in its possession has reasonable ground to believe that any person within three years has sold, or is about to sell, any securities, including securities exempted by Section 2 hereof, and that such securities are or were fraudulent or are about to be or were sold in a fraudulent manner, or that such person in such sale or attempted sale of such securities has worked or will work a fraud on purchasers thereof, or that such person in such sale or attempted sale has violated or is about to violate any of the provisions of this act, the commission shall have power to investigate said matters. In any such case the commission shall have power to make an examination and investigation of the books, records, papers, accounts, property, business and affairs of such person, and to make or cause to be made on its behalf an audit of the accounts, books, and records of such person, and by its order to require such person to permit such examination, investigation and audit to be made and to require such person to submit to the commission his books, papers, records and accounts for the purpose of such examination, investigation and audit. If such securities were or are about to be sold for or on behalf of the issuer thereof the Commission shall have like powers as against such issuer.

If any person or issuer shall fail or refuse to obey any order of the commission, which it is authorized under this act to make, requiring such person to permit an examination, investigation or audit of his books, records, papers or accounts by or on behalf of the commission and to submit the same to the commission for such purpose, the District court, upon petition of the commission, subject to the limitations in Sections 7 and 10 of Article 1 of the State Constitution and in Articles 4 and 5 of the amendments to the Constitution of the United States, shall forthwith and without notice cause a search warrant to be issued directed to the sheriff commanding the sheriff forthwith to search for and seize the books, records, papers and accounts of such person or issuer and deliver them to the commission for the purpose of such examination. The petition of the commission filed with the District court, if duly verified and sufficiently specific, or and any affidavit filed in such proceedings may be taken by the court as authority for the issuance of such search warrant; and all proceedings thereunder shall be substantially the same as like proceedings under Sections 10537 to 10540, both inclusive, General Statutes 1923. Any books, papers, records or accounts so seized shall be held by the commission for a reasonable length of time for the purpose of making such examination, investigation or audit and shall be then returned to the person from whose possession they were taken, unless otherwise ordered by the Court.

It shall have power to take such steps as are necessary to cause the arrest and prosecution of all persons guilty of any such violations. It shall be the duty of each county attorney to prosecute any violation of this act in his county, and upon his request or the request of the commission, the attorney general shall assist in such prosecution.

The commission may by summons or subpoena require the attendance and testimony of witnesses and the production of books or papers before it relating to any matter as to which it has jurisdiction under this act. Such a summons or subpoena may be issued by any commissioner. It shall be served in the same man-

ner as a summons or subpoena for witnesses in criminal cases issued on behalf of the state, and all provisions of law relative to a summons or subpoena issued in such cases shall apply to a summons or subpoena issued under this act so far as applicable. Any commissioner may require any witnesses to be sworn before testifying. Any judge of the district court may, upon application by the attorney general on behalf of the commission, compel the attendance of witnesses and the giving of testimony before the commission in the same manner and to the same extent as before said court.

A natural person who shall claim the privilege of refusing to testify on the ground that his testimony or evidence, documentary or otherwise, might tend to criminate or subject him to a penalty or forfeiture, shall not be excused on said ground from attending and testifying before the commission acting under the provisions of this act; but such natural person, having claimed said privilege and having been required nevertheless to testify, shall not be prosecuted or subjected to a penalty or forfeiture for, or on account of, any action, matter or thing, concerning which he may be required so to testify or produce evidence, except for perjury committed in such testimony. ('25, c. 192, § 19; amended '27, c. 66, § 11)

Explanatory note—For section 2 see § 3996-2, herein.

3996-20. Information acquired—Inspection and publicity—Reports—All information received by the commission from applicants under this act shall be open to inspection whenever it appears to the commission that such inspection may assist in carrying out or furthering the purposes of this act. The commission shall supply at cost copies of any such information. Provided, that the commission shall have the power to withhold any information which it deems, in justice to the person filing the same, should not be made public.

The commission shall have power to publish in pamphlet form, by newspaper advertisement, or otherwise, any information regarding securities which it considers fraudulent or which are being sold in violation of this act, or any other information it deems necessary or helpful in connection with the enforcement of this act.

It shall be the duty of the commission annually on or before November first of each year to prepare and file in the office of the governor a report for the fiscal year ending June 30th preceding the report, which report shall contain a schedule of all applications received, a schedule of all applications granted, a schedule of all applications denied, a schedule of all registrations and licenses suspended, revoked or cancelled, a schedule of receipts and disbursements of the commission, and such other information as the commission considers material. Copies of such report shall be furnished to anyone requesting same. ('25, c. 192, § 20)

3996-21. Injunctions—Searches and seizures—Whenever it shall appear from evidence satisfactory to the commission that any securities are being sold, or are about to be sold, in violation of any of the provisions of this act, or that in the issuance, sale, promotion, negotiation, advertisement, or distribution of any securities, including any securities exempted by Section 2, or in any transaction exempted by Section 3, any person shall have employed, or employs, or is about to employ any device, scheme or artifice to defraud or for obtaining any money or property by means of any false pretense, representation or promise, or that any

person shall have made, makes or attempts to make, fictitious or pretended purchases or sales of securities, including any securities exempted by Section 2, or in any transactions exempted by Section 3, the commission shall have power to apply for an injunction in any court of competent jurisdiction to restrain such unlawful acts or fraudulent practices, or such proposed unlawful acts or fraudulent practices, without abridging the penalties and other remedies by this act provided.

Subject to the limitations in Sections 7 and 10 of Article 1 of the State Constitution and in Articles IV and V of the amendments to the Constitution of the United States a search warrant may be issued at any time and without notice in any proceeding, civil or criminal, under this act wherein a complaint, information or indictment has been filed; which search warrant may be used for the purpose of obtaining and holding until after trial and decision of the case any books, records, documents, writings, or papers deemed pertinent or material in such proceeding. Any complaint so filed, if duly verified and sufficiently specific, or any affidavit filed in such proceeding, may be taken by the court as authority for the issuance of such search warrant; and all proceedings thereunder shall be substantially the same as like proceedings under Sections 10537 to 10540, both inclusive, General Statutes 1923. The court, by order made at or subsequent to the issuance of any such search warrant, may provide for the custody, care and control of anything seized pursuant thereto; but if no such order be made, anything so seized shall be delivered by the officer executing the warrant to the court, (or the clerk thereof) from which such warrant issued and shall be there retained until after trial and decision of the case. ('25, c. 192, § 21; amended '27, c. 66, § 12)

Explanatory note—For sections 2 and 3 see §§ 3996-2, 3996-3, herein.

3996-22. Violations of law—Penalties—Any person who violates any of the provisions of this act, or any registration or license or any lawful order of the commission, shall be guilty of a gross misdemeanor, and shall be fined not more than five thousand dollars, or shall be imprisoned for not more than three years, or both such fine and imprisonment in the discretion of the court. ('25, c. 192, § 22)

3996-23. Civil or criminal proceedings—Exemptions or exceptions need not be negated—Burden of proof—In any suit, complaint, information, indictment, or other writ of proceeding, civil or criminal, brought under this act, it shall not be necessary to negative any of the exemptions or exceptions provided by this act; and the burden of proof of any such exemption or exception claimed shall be upon the party claiming the existence of benefit thereof. ('25, c. 192, § 23)

3996-24. Other actions or prosecutions not limited—Nothing in this act shall limit statutory or common law right of any person to bring action in any court for any act involved in the sale of securities, or the right of the state to punish any person for any violation of any law. ('25, c. 192, § 24)

3996-25. Partial invalidity of law—If any provision of this act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby. ('25, c. 192, § 25)

3996-26. Seal of commission—The commission shall adopt a seal with the words "Department of Commerce of Minnesota" and such design as the commission shall prescribe engraved thereon, by which seal the commission shall authenticate its signature and proceedings. ('25, c. 192, § 26; amended '27, c. 66, § 13)

3996-27. Certiorari from Supreme Court—The supreme court, upon petition of any person aggrieved, may review by certiorari any final order or determination of the commission. The issuance of the writ shall not, however, operate as a stay of proceedings unless specifically so ordered. ('25, c. 192, § 27)

3996-28. Laws repealed and continued in effect—Pending proceedings—When this act becomes effective, all proceedings then pending before said state securities commission under and by virtue of any law previously in force may be continued by the successors in authority of said commission; all applications for investment company licenses pending on the effective date of this act shall be deemed applications for registration hereunder; all applications for dealers' licenses pending on the effective date of this act shall be deemed applications for brokers' licenses hereunder; all investment company licenses outstanding and all securities on which proper notification of intention to sell has been given as provided by said Chapter 429, General Laws of Minnesota for 1917, and acts amendatory thereof, shall be deemed registrations under this act and said securities shall be legally salable, subject to the provisions of this act unless otherwise ordered by the commission; provided, that all investment company licenses which were issued to investment companies who paid therefor an annual fee of one hundred dollars shall terminate 30 days from and after the time this act becomes effective. All dealers' licenses outstanding shall be deemed brokers' licenses hereunder and be subject to the provisions thereof. All actions, civil and criminal, pending or which may arise under said Chapter 429, General Laws of Minnesota for 1917, and acts amendatory thereof, shall be continued thereunder. Otherwise Chapter 429, General Laws of Minnesota for 1917; Chapter 105, General Laws of Minnesota for 1919; Chapter 257, General Laws of Minnesota for 1919; Chapter 372, General Laws of Minnesota for 1921; Chapter 426, General Laws of Minnesota for 1921; Chapter 4, General Laws of Minnesota for 1923, and Chapter 271, General Laws of Minnesota for 1923 and all other acts or parts of acts inconsistent herewith, are hereby repealed. But the revolving fund created by Section 5, Chapter 429, General Laws of Minnesota for 1917, as amended by Section 6, Chapter 105, General Laws of Minnesota for 1919, is hereby perpetuated. ('25, c. 192, § 28; amended '27, c. 66, § 14)

Explanatory note—See notes to §§ 3977 to 3980, 3981, 3982 to 3996, herein.

3997. Bank applications must be approved by state securities commission—The incorporators of any bank proposed to be organized under the laws of this state shall execute and acknowledge an application in writing in the form prescribed by the State Securities Commission, and shall file the same in its office, which application shall be signed by two or more of the incorporators, requesting a certificate authorizing the proposed bank to transact business at the place, and in the name stated in said application. At the time of filing said application the applicant shall pay to the commission a filing fee of \$25.00, which shall be paid into the state treasury and credited to the State Securities Commission fund. Thereupon the State Securities

3996-27
178m 023
228nw 102

250nw 503
252nw 217
3996 4

3997
20 — 140

3997-00
31 — 382

3997-4000
178m 492
227nw 652
240nw 450

Commission shall fix a time within thirty (30) days after the filing of said application, for a hearing at its office at the state capitol, at which hearing it shall decide whether or not such application shall be granted. A notice of such hearing shall be published in the form prescribed by the State Securities Commission in some newspaper published in the municipality in which said proposed bank is to be located, and if there is no such newspaper, then at the county seat of the county in which such bank is proposed to be located. Such notice shall be published once, at the expense of the applicants, not less than ten (10), nor more than twenty (20) days, prior to the date of such hearing. At such hearing the State Securities Commission shall consider the application, and shall hear the applicants and such witnesses as may appear in favor of or against the granting of the application of such proposed bank.

If upon such hearing it shall appear to the State Securities Commission that said application should be granted, it shall, not later than thirty (30) days after such hearing, and after said applicants have otherwise complied with the provisions of law applicable to the organization of a bank, including the provisions herein contained make and file in the office of the Superintendent of Banks its order, in writing, directing said Superintendent of Banks to issue the certificate of authorization as provided by law. If, however, said State Securities Commission shall decide that said application should not be granted, it shall deny such application and make its order, in writing, to that effect, and file the same in the office of the Superintendent of Banks, and forthwith give notice thereof by registered mail to one of the incorporators named in the application for such proposed bank, addressed to such incorporator at the address stated in such application and thereupon said Superintendent of Banks shall refuse to issue the certificate of authorization, which is prescribed by law, to such proposed bank. ('19 c. 86 § 1, amended '21 c. 498 § 1)

See 145-125, 176+346; 145-221, 176+759.

3998. Provision for expenses—The expenses of organization and incorporation of any such banks shall not exceed the necessary legal expenses incurred in drawing articles of incorporation, publication and recording thereof, and such incorporators shall, prior to the issuance of the certificate of authorization provided for by law, file with the Superintendent of Banks, a verified statement, showing the amount of such expense incurred in the organization of such bank. ('19 c. 86 § 2)

3999. Condition under which charters may be issued—If the applicants are of good moral character and financial integrity, and if there is a reasonable public demand for such bank in such location, and if the organization expenses being paid by the subscribing shareholders does not exceed the necessary legal expenses incurred in drawing incorporation papers and publication and recording thereof, as required by law, and if the probable volume of business in such location is sufficient to insure and maintain the solvency of the new bank, and the solvency of the then existing bank or banks in such locality, without endangering the safety of any bank in said locality as a place of deposit of public and private money, and if the State Securities Commission is satisfied that the proposed bank will be properly and safely managed, such application shall be granted, otherwise it shall be denied. In case of the denial of such application, the State Securities Commission shall specify the grounds for such denial and the supreme court, upon petition of any person

aggrieved, may review by certiorari any such order or determination of the commission. ('19 c. 86 § 3)

4000. Inconsistent act repealed—Bank defined—Any and all parts of acts, inconsistent herewith, are hereby repealed. The word bank, as used herein, shall mean any savings bank or bank of discount and deposit or trust company organized under the Laws of this State. ('19, c. 86, § 4; amended '25, c. 261)

SALE OF OIL AND GAS LANDS OR INTERESTS THEREIN.

4000-1. Registration of lands or interests before sale by Department of Commerce—That no person shall sell to any person in this state any oil or gas lands, or any lands represented to contain or to be a prospect for oil or gas, or any interest therein or thereunder or royalties therefrom, unless and until such lands, interests or royalties shall have been first registered for sale by the department of commerce (commerce commission) of this state created and existing under Chapter 426, Laws 1925, or its successors in authority. ('27, c. 68, § 1)

Explanatory note—For Laws 1925, c. 426-see §§ 53-1 to 53-52, herein.

The statute is not unconstitutional within the provisions of the state or federal Constitutions as class legislation or as interfering with the right of contract. 210+1001.

Whether the "Blue Sky Law," prohibits the sale of interests in oil, gas, or mineral lands, and whether, if it does, it is unconstitutional because the subject is not expressed in the title, or for other constitutional reasons, is not determined. 210+1001.

4000-2. Registration — Procedure — Registration of such lands, interests or royalties shall be made or denied upon application to the said commerce commission in substantially the same manner, under substantially the same procedure, and upon substantially the same grounds or conditions as are prescribed for the registration of securities by Section 5 of Chapter 192, Laws 1925, commonly known as the blue sky law. But the commerce commission shall have power to make such changes in the forms of application, details of procedure, and record of registration as are reasonably necessary or convenient for the effective registration of such oil or gas lands or interests therein. A separate "Register" may be kept under this act, if deemed advisable. ('27, c. 68, § 2)

Explanatory note—For Laws 1925, c. 192, § 5 see § 3996-5, herein.

4000-3. Fees for registration—Fees shall be paid to the commission in the sum of one dollar for each one thousand dollars of the total proposed sale price of the lands, interests or royalties covered by the application for registration, or any amendment thereof; provided that the minimum fee shall be twenty-five dollars and the maximum fee shall be five hundred dollars. Such fees shall accompany the application.

Section 17 of Chapter 192, Laws of 1925, as now existing or hereafter amended, shall apply to and govern fees to be paid by applicants for brokers' licenses or agents' licenses under this act.

All fees and charges collected by the commerce commission under this act shall be covered into the state treasury. ('27, c. 68, § 3)

Explanatory note—For Laws 1925, c. 192, § 17 see § 3996-17, herein.

4000-4. Information to commission — Brokers — Agents—Agents for service of process—Hearings by and orders of commission—Deposits for examinations, etc.—Advertising matter—False statements, etc.—Cer-

tificates, etc. — Investigations — Inspections, etc. — Reports — Injunctions — Searches and seizures — Civil or criminal proceedings—Certiorari from supreme court —The provisions of sections eight (8), nine (9), ten (10), eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), eighteen (18), nineteen (19), twenty (20), twenty-one (21), twenty-three (23), twenty-four (24), and twenty-seven (27) of Chapter 192, Laws 1925, as now existing or hereafter amended, are hereby incorporated into and made a part of this act and shall have full force and effect herein. But for the purposes of this act the word "security" and the word "securities," wherever the same appear in said sections incorporated from said other law, shall be deemed stricken therefrom and the words "oil or gas lands, and lands represented to contain or be a prospect for oil or gas, and interests in or under such lands and royalties therefrom," shall be deemed substituted therefor; the term "issuer of securities" or any term of like import in said sections incorporated from said other law shall be here construed to mean and include the maker or grantor of any deed or conveyance or like instrument coming within the purview of this act; and the phraseology of said sections incorporated from said other law shall be so construed generally in this act as to make the same most effective here. ('27, c. 68, § 4)

Explanatory note—For Laws 1925, c. 192, §§ 8 to 16, 18 to 21, 23, 24, 27 see §§ 3996-8 to 3996-16, 3996-18 to 3996-21, 3996-23, 3996-24, 3996-27 herein.

4000-5. Licensed brokers—Brokers and agents licensed under Chapter 192, Laws 1925, as now existing or hereafter amended, shall be deemed licensed under this act. ('27, c. 68, § 5)

Explanatory note—For Laws 1925, c. 192, see §§ 3996-1 to 3996-28, herein.

4000-6. Violations of law or orders—Penalty—Any person who violates any of the provisions of this act, or any registration or license or any lawful order of

the commerce commission, shall be guilty of a gross misdemeanor and shall be fined not more than five thousand dollars, or imprisoned for not more than three years, or both fined and imprisoned in the discretion of the court. ('27, c. 68, § 6)

4000-7. Sales excepted from operation of law—This act shall not apply to any isolated sale not made or occurring in the course of repeated or successive sales; nor to any judicial sale, or any transaction lawfully ordered, authorized, or approved by any court in the due course of its proceedings; nor to any sale to any bank, savings institution, trust company, insurance company, or licensed broker. ('27, c. 68, § 7)

4000-8. Definitions—As used in this act the words "person," "sale," "sell," "sold," "broker," "agent," and any other word or words requiring a definition thereof, shall mean the same as in Chapter 192, Laws 1925, commonly known as the blue sky law. ('27, c. 68, § 8)

Explanatory note—For Laws 1925, c. 192 see §§ 3996-1 to 3996-28, herein.

4000-9. Laws applicable to regulated transactions—Any transaction involving or relating to oil or gas lands, or lands represented to contain or be a prospect for oil or gas, or any interest in or under such lands, or royalties therefrom, which comes within the purview of the blue sky law, being Chapter 192, Laws 1925, as now existing or hereafter amended, shall be controlled by said blue sky law; but any transaction or offense fairly coming within the provisions of both said blue sky law and this act may be dealt with by the commerce commission, or prosecuted by the proper public officers, under either of said laws. ('27, c. 68, § 9)

Explanatory note—For Laws 1925, c. 192 see §§ 3996-1 to 3996-28, herein.

4000-10. Laws repealed—All acts and parts of acts inconsistent with the provisions of this act are hereby repealed so far as necessary to give full force and effect to this act. ('27, c. 68, § 10)

CHAPTER 22

FORESTRY AND FOREST [AND PRAIRIE] FIRES.

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1940 Supplement
To
Mason's Minnesota Statutes
1927

(1927 to 1940)
(Superseding Mason's 1931, 1934, 1936 and 1938
Supplements)

Containing the text of the acts of the 1929, 1931, 1933, 1935, 1937 and 1939 General Sessions,
and the 1933-34, 1935-36, 1936 and 1937 Special Sessions of the Legislature, both new and
amendatory, and notes showing repeals, together with annotations from the
various courts, state and federal, and the opinions of the Attorney
General, construing the constitution, statutes, charters
and court rules of Minnesota together with digest
of all common law decisions.



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CHAPTER 21

Inspection of Food and Other Articles

3789. Unlawful to sell certain food.

Section creates a tort liability in favor of a person injured by eating of unwholesome, poisonous, or deleterious food sold to him, independently of any showing of culpability or negligence, and recovery may be had for death of one from unwholesome food without proof of negligence. *Doherty v. S.*, 227Wis661, 278NW437.

3794. Salaries of dairy and food commissioner and employees.

Commissioner of agriculture may appoint inspectors for purpose of inspecting and examining premises where meat is sold and to determine whether dairy and food laws of state are complied with, but has no authority to appoint a regular meat inspector to inspect home slaughtered and ready dressed meat of a cooperative association to relieve such association of difficulty arising from ordinance of a city prohibiting sale of dressed meat unless inspected by registered inspector. *Op. Atty. Gen.* (135a-6), Jan. 24, 1935.

3798. Right of inspection.

Director of division of hotel inspection of Department of Health has right to issue order that all persons handling food and catering to public in a bakery and cafe keep his or her person clean and sanitary. *Op. Atty. Gen.* (238j), July 10, 1936.

3801. Price not collectible.

Seller of infected hogs held not entitled to directed verdict for price. 180M78, 230NW259.

3806. Labeling.

Label on bag of sugar may be a tag. *Op. Atty. Gen.*, Mar. 27, 1933.

Bags of sugar must contain labels showing weight, kind of sugar and name and address of manufacturer or distributor. *Op. Atty. Gen.*, Mar. 27, 1933.

Commissioner exceeded his authority in requiring canners of soaked dried peas to label them as "Below U. S. Standard, low quality, but not illegal," a label "prepared from dried peas" being sufficient. *Op. Atty. Gen.*, Apr. 2, 1934.

3810. Disposition of receipts.

Fines collected under §8335-3 should be paid into the county treasury and not into the state treasury. *Op. Atty. Gen.* (135a-4), Aug. 3, 1934.

Fines imposed under Pure Food Law in justice court held on Fair Grounds should be remitted to treasurer of State Agricultural Society. *Op. Atty. Gen.* (266b-9), Oct. 8, 1934.

Justice of the peace is personally responsible for check taken in payment of fine. *Op. Atty. Gen.* (266b-9), Sept. 5, 1934.

3811. Milk and cream.

Gelatin may not be added to sour cream and butter-milk, even though label declares addition of foreign product. *Op. Atty. Gen.*, May 4, 1933.

Individual selling milk to erosion camp located within city limits must comply with local ordinances. *Op. Atty. Gen.*, July 27, 1933.

3813. Milk and Cream—Sales licensed.—No person shall sell milk or cream without being licensed by the dairy and food commissioner, and the fee for such license shall be \$1.00 for each place or vehicle from which sale is made. Every such license shall expire May 1st, next after its issue; shall be given only to a person owning or leasing the vehicle or place from which sales are to be made, and shall not be transferred. Each license shall be numbered and shall contain the name, residence and place of business of the licensee, the names of all employees authorized to act thereunder, and the number of vehicles and places to be used. The name and number of the license shall be plainly inscribed on both sides of each vehicle in use for the purpose aforesaid, and the license shall be conspicuously posted in each place where such milk or cream is sold, and the making of every sale from the vehicle not so inscribed or from a place where such license is not so posted, shall be deemed the commission of a misdemeanor. Provided that any person may sell or peddle the products of the farm or garden occupied and cultivated by him without obtaining a license therefor. And provided that no permit, inspection, or other authorization shall be

required of such person unless the cost thereof is paid by the municipality, agency or board requiring the same. ('21, c. 495, §24; Apr. 20, 1935, c. 217.)

The title of the act calls for the amendment of "section 3813," but the enacting part calls for the amendment of "section 3183." At the beginning of the section as amended the number "3813" appears.

A restaurant that sells milk and cream only as a part of meal is required to take out a milk license. *Op. Atty. Gen.*, Jan. 15, 1934.

This section as amended does not affect or supersede Willmar City Ordinance No. 259, except insofar as the ordinance applies to sellers of milk and cream who are required to obtain license under this section. *Op. Atty. Gen.* (290j-6), June 26, 1935.

Municipalities may require retail places, plants or vehicles where sales are carried on to pay license fees to cover expense, except as to producers selling their own milk or cream. *Op. Atty. Gen.* (290j-6), Oct. 2, 1935.

Section applies to all municipalities, whether operating under a home rule charter or not. *Id.*

Government and the milk industry. 22MinnLawRev789.

3815. Milk and cream sold and purchased by weight, etc.

Interstate shipments of cream are subject to state law when reaching final destination. *Op. Atty. Gen.* (135b-6(f)), Apr. 12, 1934.

A cooperative creamery association may be prosecuted for violation of state dairy and food law, and employee thereof violating law may also be prosecuted, but officers of corporation should not be taken into custody by officer serving summons, corporation, and not officers being prosecuted. *Op. Atty. Gen.* (494b-10), Jan. 8, 1935.

3820. Local inspection.

Municipality may impose license on producers and dealers selling milk in its limits, except as power may be affected by Const., Art. 1, §18. *Op. Atty. Gen.*, Dec. 11, 1929.

Ordinances may provide for inspection both as to producers and dealers in milk sold in municipality and require payment of inspection fee. *Op. Atty. Gen.*, Dec. 11, 1929.

City of Albert Lea may require milk producers to pay part of expense of inspections, but it may not prohibit sale of milk in city by producers outside of specified inspection zone. *Op. Atty. Gen.*, May 13, 1932.

Municipalities may by ordinance provide for inspection of milk, cream and butter sold within their limits. *Op. Atty. Gen.*, July 10, 1933.

Municipalities may require retail places, plants or vehicles where sales are carried on to pay license fees to cover expense, except as to producers selling their own milk or cream. *Op. Atty. Gen.* (290j-6), Oct. 2, 1935.

Fees imposed in connection with municipal regulations designed to protect public health may not be substantially in excess of actual cost of inspection, registration, testing, etc., necessarily incurred. *Op. Atty. Gen.* (477b-17), July 9, 1937.

Charging a local resident within five miles of village a fee of \$1 and requiring a license fee of \$5 from persons who lived more than five miles from village is an unreasonable and arbitrary distinction, rendering ordinance invalid. *Id.*

Power of municipality to exclude sale of milk from outside plants under municipal health ordinances. 18 MinnLawRev841.

3821. Butter fat content of butter.—No person shall manufacture, for sale, or sell, or have in possession with intent to sell, any dairy or creamery butter which contains less than 80 per cent butter fat by weight. (As amended Mar. 2, 1937, c. 55, §1.)

3821-5. Commissioner of agriculture to audit books in certain cases.—Whenever complaint shall be made to the Commissioner of Agriculture that any person, firm or corporation is violating the provisions of Chapter 162 of the Laws of 1927 [§§3821-1 to 3821-4], and/or whenever the Commissioner of Agriculture shall have reason to believe that any person, firm or corporation is violating the provisions of said chapter, the Commissioner of Agriculture may cause the books and records of the person, firm or corporation alleged to be violating said chapter to be examined and audited by a competent accountant familiar with creamery practices and the handling of books and accounts of creameries. Such audit shall be made for the purpose

of aiding in determining whether or not there has been a violation of said Chapter 162 of the Laws of 1927. (Act Apr. 25, 1931, c. 414, §1.)

3821-6. To employ accountant.—The investigation herein provided for shall be made by an accountant or accountants employed by the Commissioner of Agriculture pursuant to the terms and provisions of Chapter 284 of the Laws of 1933 [§§6114 to 6117], but any such investigation shall be made at the sole cost and expense of the State. (Act Apr. 25, 1931, c. 414, §2.)

3824. Dairy products—Preservatives.

This section is not superseded by §3933. Op. Atty. Gen. (135b-5), July 12, 1935.

3826-1. Wrongful advertisement of meats prohibited.—A person, who, with intent to defraud sells or exposes for sale any meat or meat preparation and falsely represents the same to be kosher, whether such meat or meat preparation be raw or prepared for human consumption, or as having been prepared under and of a product or products sanctioned by the orthodox Hebrew religious requirements; or falsely represents any food product or the contents of any package or container to be so constituted and prepared, by having or permitting to be inscribed thereon the word "kosher" in any language; or sells or exposes for sale in the same place of business both kosher and non kosher meat or meat preparations, either raw or prepared for human consumption, who fails to indicate on his window signs and all display advertising, in block letters at least four inches in height, "kosher and non kosher meat sold here"; or who exposes for sale in any show window or place of business both kosher and non kosher meat or meat preparations, either raw or prepared for human consumption, who fails to display over each kind of meat or meat preparation so exposed a sign in block letters at least four inches in height reading "kosher meat," or "non kosher meat," as the case may be, is guilty of a misdemeanor and shall be punished accordingly. (Act Apr. 26, 1929, c. 398, §1.)

Commissioner may prescribe rules and regulations with reference to labeling of fowls for kosher trade. Op. Atty. Gen., Oct. 2, 1933.

3827 to 3827-5. [Repealed.]

Repealed, effective Apr. 24, 1937, by Laws 1937, c. 101, §13, post §3827-18.

3827-6. Definitions.—That for the purpose and within the meaning of this act the following definitions shall obtain:

(a) "Frozen Foods" means ice cream, frozen custards, ice milk, milk sherbet, fruit ice or ice sherbet, frozen malted milk, as defined in this act.

(b) "Milk Products" means pure, clean and wholesome cream, pure milk fat, butter, milk, evaporated milk, skimmed milk, condensed milk, sweetened condensed milk, condensed skimmed milk, sweetened condensed skimmed milk, dried milk, dried skimmed milk.

(c) "Mix" or "Ice Cream Mix" means the mixture from which ice cream is frozen, made from a combination of milk products and one or more of the following ingredients: eggs, sugar, dextrose and honey, with or without flavoring and coloring, and with or without edible gelatin or vegetable stabilizer. It contains not more than one-half of one per centum by weight of edible gelatin or vegetable stabilizer, not less than twelve per centum by weight of milk fat, and not less than twenty per centum by weight of total milk solids. Ice cream mix in concentrated or condensed form shall contain such relative amounts of ingredients, that when diluted according to directions, it shall comply with the above definition of ice cream mix.

(d) "Ice Cream Mix Base" means ice cream powder or dry ice cream mix and is the product resulting from the removal of water from ice cream mix and contains, all tolerances allowed for, not less than 30.5 per centum of milk fat and not less than 64.5 per

centum of total solids and not more than five per centum of moisture.

(e) "Ice Cream" means the pure, clean, frozen product made from a combination of milk products and one or more of the following ingredients: Eggs, sugar, dextrose and honey, with or without flavoring and coloring, and with or without edible gelatin or vegetable stabilizer; and in the manufacture of which, freezing has been accompanied by agitation of the ingredients. It contains not more than one-half of one per centum by weight of edible gelatin or vegetable stabilizer, not less than twelve per centum by weight of milk fat, and not less than twenty per centum by weight of total milk solids; except when fruits, nuts, cocoa or chocolate, maple syrup, cakes or confections are used for the purpose of flavoring, then it shall contain not less than twelve per centum by weight of milk fat and not less than twenty per centum by weight of total milk solids, except for such reduction in milk fat and in total milk solids as is due to the addition of such flavoring, but in no such case shall it contain less than ten per centum by weight of milk fat or less than sixteen per centum by weight of total milk solids. In no case shall any ice cream contain less than one and six-tenths pounds of total food solids per gallon or weigh less than four and one-half pounds per gallon.

(f) "Frozen Custard" means French ice cream, French custard ice cream, ice custard, parfaits and similar frozen products. Frozen custard is a pure, clean frozen product made from a combination of milk products and one or more of the following ingredients: egg yolk, sugar, dextrose and honey, with or without flavoring and coloring, and with or without edible gelatin or vegetable stabilizer; and in the manufacture of which, freezing has been accompanied by agitation of the ingredients. It contains not more than one-half of one per centum by weight of edible gelatin or vegetable stabilizer, not less than twelve per centum by weight of milk fat, not less than twenty per centum by weight of total milk solids, not less than five egg yolks or their equivalent in egg powder or egg yolk powder in each gallon of finished product. In no case shall any frozen custard contain less than one and six-tenths pounds of total food solids per gallon or weigh less than four and one-half pounds per gallon.

(g) "Ice Milk" means the pure, clean, frozen product made from a combination of milk products and one or more of the following ingredients: sugar, dextrose and honey with flavoring, but without coloring, and with or without edible gelatin or vegetable stabilizer; and in the manufacture of which, freezing has been accompanied by agitation of the ingredients. It contains not more than one-half of one per centum by weight of edible gelatin or vegetable stabilizer, not less than two per centum and not more than twelve per centum by weight of milk fat, and not less than fourteen per centum by weight of total milk solids. In no case shall any ice milk contain less than one and three-tenths pounds of total food solids per gallon or weigh less than five pounds per gallon.

(h) "Milk Sherbet" means the pure, clean, frozen product made from a combination of milk products and one or more of the following ingredients: eggs, sugar dextrose, and honey with fruit or fruit juice flavoring and coloring, with not less than four-tenths of one per centum of acid (as determined by the Mann Acid Test) and with or without added edible gelatin or vegetable stabilizer; and in the manufacture of which, freezing has been accompanied by agitation of the ingredients. It contains not less than two per centum by weight of milk fat and not less than four per centum by weight of milk solids and weighs not less than five and one-half pounds per gallon.

(i) "Fruit Ice or Ice Sherbet" means the pure, clean, frozen product made from water, sugar, dextrose and honey with fruit or fruit juice flavoring and coloring, with not less than four-tenths of one per centum of acid (as determined by the Mann Acid Test)

and with or without added edible gelatin or vegetable stabilizer; and in the manufacture of which, freezing has been accompanied by agitation of the ingredients. It contains no milk solids and weighs not less than five and one-half pounds per gallon.

(j) "Frozen Malted Milk" means the pure, clean, semi-frozen product made from the combination of milk products, malted milk and one or more of the following ingredients: eggs, sugar dextrose and honey, with or without flavoring and coloring, and with or without edible gelatin or vegetable stabilizer; and in the manufacture of which, freezing has been accompanied by agitation of the ingredients. It contains not more than one-half of one per centum by weight of edible gelatin or vegetable stabilizer, not less than seven per centum by weight of milk fat, not less than fourteen per centum by weight of total milk solids, and not less than three per centum by weight of malted milk. In no case shall frozen malted milk contain less than one and three-tenths pounds of total food solids per gallon or weigh less than four and one-half pounds per gallon.

(k) "Imitation Ice Cream" means any frozen substance, mixture or compound, regardless of the name under which it is represented, which is made in imitation or semblance of ice cream, or is prepared or frozen as ice cream is customarily prepared or frozen, and which is not ice cream, frozen custard, ice milk, milk sherbet, fruit ice or ice sherbet, or frozen malted milk, as defined in this act.

(l) "Person" means any individual, partnership, corporation, or association.

(m) "Manufacture" means processing and/or freezing. (Mar. 25, 1937, c. 101, §1.)

3827-7. Manufacturers of frozen foods to obtain license.—No person shall manufacture frozen foods, ice cream mix or ice cream mix base, as defined herein, for resale, without first having obtained a license therefor from the Department of Agriculture, Dairy and Food which is charged with the duty and power of administering and enforcing the provisions of this act and which in so doing shall have all the powers and authority with relation thereto that is conferred upon it by Mason's Minnesota Statutes of 1927, Sections 3788 to 3873, inclusive, as amended. Nothing in this act shall apply to educational institutions or to charitable, fraternal or religious organizations, not regularly engaged in the manufacture of frozen foods, ice cream mix or ice cream mix base or to private homes manufacturing for their own use. (Mar. 25, 1937, c. 101, §2.)

3827-8. Department of agriculture, dairy, and foods to inspect frozen foods.—No frozen foods as defined herein not manufactured in this state shall be sold, offered, exposed, exchanged, or held in possession with intent to sell within this state, unless the same are first inspected and registered with the Department of Agriculture, Dairy and Food as provided in Section 5 [3827-10] of this act. (Mar. 25, 1937, c. 101, §3.)

3827-9. Must obtain license for each plant.—Any person desiring to manufacture frozen foods, ice cream mix or ice cream mix base, as described in Section 1 hereof, shall apply to the Department of Agriculture, Dairy and Food, for a license for each plant or establishment in such form as may be required by said department. Such application shall be accompanied by a fee of \$1.00, which shall be paid into the State Treasury and credited to the general revenue fund. If the Department of Agriculture, Dairy and Food shall find that the applicant maintains a proper place and sanitary equipment, it shall issue to the applicant a license therefor. (Mar. 25, 1937, c. 101, §4.)

3827-10. Non-resident manufacturers to obtain license.—Any person who manufactures frozen foods, ice cream mix or ice cream mix base, as defined herein, outside of the state, for sale within the state, shall apply for registration with the Department of Agri-

culture, Dairy and Food in such form and furnish such information as the department may require. Samples of all frozen foods, ice cream mix or ice cream mix base, so manufactured for sale and sold within this state shall be submitted. Each application shall be accompanied by a fee of \$5.00 which shall constitute the registration fee in case certificate of registration is granted. If the Department of Agriculture, Dairy and Food shall find that the samples so submitted are up to the accepted standards, and otherwise comply with the laws of this state, then they shall issue to applicant a certificate of registration. (Mar. 25, 1937, c. 101, §5.)

3827-11. Expiration of licenses.—Such license or certificate of registration shall expire on the 31st day of December following its issue, and no license or certificate of registration shall be issued for a longer term than one year, and shall not be transferable from one person to another, or from the ownership to whom issued to another ownership, or from one place to another place or location. (Mar. 25, 1937, c. 101, §6.)

3827-12. Licenses may be revoked.—The Department of Agriculture, Dairy and Food shall have the power to revoke any license or certificate of registration thus granted, for failure to comply with the provisions of this act, or rules and regulations made hereunder, as provided in Mason's Minnesota Statutes of 1927, Section 3814. (Mar. 25, 1937, c. 101, §7.)

3827-13. All containers shall be labeled.—(a) All cans or containers used in the sale or distribution of ice cream mix or ice cream mix base shall bear a label attached to same giving the following information:

- (1) Name of product.
- (2) Percentage of milk fat contained in product.
- (3) Percentage of total solids contained in product.
- (4) Statement of net contents.
- (5) Name and address of manufacturer.

Every package of frozen foods packed by the manufacturer shall bear a label. The label shall give the name of the product, the name and address of the manufacturer or distributor and statement of net contents.

(b) No person shall sell, advertise, or expose for sale, or offer for sale a frozen food, ice cream mix or ice cream mix base, as defined in this act, if it contains any fat, oils or paraffin, other than milk fat, except such fats or oils as are naturally contained in the flavor used.

(c) No person shall sell or offer or expose for sale ice milk, unless contained in a package upon which package shall be conspicuously printed the words "Ice Milk". The words "Ice Milk" shall appear in dark ink upon a light background in type not less than 24 point Gothic capitals.

(d) No person shall sell, advertise or offer or expose for sale any imitation ice cream.

(e) No person shall sell, offer for sale or advertise for sale any frozen food, ice cream mix or ice cream mix base, as defined in this act, if the brand name of the frozen food, ice cream mix or ice cream mix base or label upon it or the advertising accompanying it shall give a false indication of origin, character, composition, name of manufacturer, or is otherwise false or misleading in any particular. (Mar. 25, 1937, c. 101, §8.)

3827-14. Plants must be kept sanitary.—Any plant or establishment for the manufacture of frozen foods, ice cream mix or ice cream mix base, as defined herein, operated under the provisions of this act shall be so located, constructed and equipped that it may be kept in a clean and sanitary condition. (Mar. 25, 1937, c. 101, §9.)

3827-15. Milk must be pasteurized.—All milk, and/or milk products used as constituents of frozen foods, ice cream mix or ice cream mix base, as defined herein, shall be pasteurized. Pasteurization is

hereby defined as the process of heating milk and/or milk products to a temperature of not less than 145 degrees F., and holding at that temperature for not less than 30 minutes. After pasteurization such milk and/or milk products shall be immediately cooled to at least 50 degrees F., and held at or below that temperature until frozen.

A recording thermometer record chart, properly dated, of each batch of milk, and/or milk products pasteurized for use in the manufacture of frozen foods, ice cream mix or ice cream mix base, shall be available at the plant of pasteurization at all reasonable times, for inspection by the Department of Agriculture, Dairy and Food.

The bacterial count of frozen foods, ice cream mix or ice cream mix base shall not exceed 150,000 per milliliter as determined by the agar plate method in accordance with the latest standard methods of the American Public Health Association. Such test shall be made of a representative sample of frozen foods, ice cream mix or ice cream mix base, taken from an unbroken package in the possession of the manufacturer, but in the event that no unbroken package is available when sample is requested, then it shall be taken from a broken package in the possession of the manufacturer. (Mar. 25, 1937, c. 101, §10.)

3827-16. Violation a misdemeanor.—Any person violating any of the provisions of this act or any regulations made hereunder or now in force, shall be guilty of a misdemeanor and be punished by a fine of not less than \$15.00 or by imprisonment in the county jail for not less than ten days for the first offense, and in the sum of not less than \$30.00 or by imprisonment in the county jail for not less than 20 days for each subsequent offense. (Mar. 25, 1937, c. 101, §11.)

3827-17. Provisions severable.—If any section, subdivision, sentence or clause in this act shall, for any reason, be held void or unconstitutional, such decision shall not affect the validity of any other portion of this act. (Mar. 25, 1937, c. 101, §12.)

3827-18. Law repealed.—Mason's Minnesota Statutes of 1927, Section 3827, and Laws 1931, Chapter 75, are hereby repealed. (Mar. 25, 1937, c. 101, §13.)

3827-19. Effective 30 days after passage.—This act shall take effect and be in force from and after 30 days after its passage. (Mar. 25, 1937, c. 101, §14.)

3835. Commercial canneries—Supervision and regulation by commissioner—Inspection, etc.

A movable cannery mounted on a trailer taken from farm to farm where he received cash for his service in canning materials for persons, and sometimes putting into effect a barter scheme whereby he would exchange a certain number of cans of products he has just canned for one individual for canned food which he has canned for someone else, did not operate as a "commercial cannery." Op. Atty. Gen. (136d), Oct. 5, 1934.

Fruit jams, jellies and preserves are within Commercial Canning Law but noodles and spaghetti are not. Op. Atty. Gen. (135b-6k), Jan. 28, 1935.

Canning of beverages such as lime rickey, grapefruit drink and orangeade is not within act, though product will contain a minimum of 6% of fruit juice. Op. Atty. Gen. (135b-6(a)), Oct. 22, 1935.

3851-3855. [Repealed].

Repealed by Laws 1931, c. 344, §9.

3855-1. Oleomargarine not to be colored.—That no person, firm or corporation shall by himself, herself or themselves, or by his, her or their agent or servant, nor shall any officer, agent, servant or employe of any person, firm or corporation, manufacture, sell, ship, consign, offer for sale, expose for sale, or have in possession with intent to sell, oleomargarine or any similar substance, article, product or compound made wholly or in part out of any fats, oils or oleaginous substances or compound thereof, not produced from pure, unadulterated milk, or cream from the same, without the admixture or addition of any fat foreign to said milk or cream, and which shall be in imitation of yellow butter produced from pure, unadulterated milk, or cream of the same, with or without coloring

matter; nor unless the said article, product, or compound, so manufactured, shipped, consigned, offered for sale, exposed for sale, or had in possession with intent to sell, shall be made and kept free from all coloration or ingredients causing it to look like butter of any shade of yellow, as hereinafter described; nor unless the same shall be kept and presented in a separate and distinct form and in such manner as will advise the purchaser and consumer of its real character; nor unless such person, firm or corporation shall in all respects comply with and observe the provisions of this act. For the purpose of this act, oleomargarine or similar substances shall be deemed to look like, be in resemblance of, or in imitation of butter of a shade of yellow, when it has a tint or shade containing more than one and six-tenths degrees of yellow, or of yellow and red collectively, but with an excess of yellow over red, as measured in the terms of the Lovibond tintometer scale, or its equivalent. Nothing in this act shall be construed as prohibiting the manufacture or sale of oleomargarine made in whole or in part from animal fats or oils. (Act Apr. 25, 1931, c. 344, §1.)

3855-2. Must have license to sell.—No person, firm or corporation shall by himself, herself or themselves, or by his, her, or their agent or servant, nor shall any officer, agent, servant, or employe of any person, firm or corporation, manufacture, sell, ship, consign, offer for sale, expose for sale, or have in possession with intent to sell, oleomargarine, without first having obtained a license granted by the state commissioner of agriculture, dairy and food, who shall provide a suitable blank form of application for the use of the applicant. The fee for such license shall be one dollar and shall expire June 30, next after its issue, and no license shall be issued for a longer term than one year and shall not be transferable from one person to another person, or from the ownership to whom issued to another ownership. A separate license shall be procured for each place from which sale is made, and shall be posted at all times at such place. (Act Apr. 25, 1931, c. 344, §2.)

3855-3. Oleomargarine, Labeling of.—It shall be unlawful for any person to manufacture, sell, ship, consign, offer for sale, expose for sale, or have in possession with intent to sell, oleomargarine made wholly or partly out of fats, oils, or oleaginous substances or compound thereof unless each receptacle and package in which the same is kept for sale or sold has securely affixed upon the side thereof, a white or light colored label which shall be printed in the English language with black ink in type not smaller than 36-point bold-faced capitals the word "oleomargarine" and immediately thereafter under the same label in the same colors there shall be printed in the English language, in 8-point bold-faced gothic capitals, the name and, with substantial accuracy, the percentage of each ingredient contained in such oleomargarine, giving the name of each animal or vegetable from which such fats or oils are derived. (Act Apr. 25, 1931, c. 344, §3.)

Insertion of slipper label within package is not compliance with section. Op. Atty. Gen., Feb. 10, 1933.

3855-4. Must be stamped or placarded.—It shall be unlawful for any person to sell or offer or expose for sale, or have in possession with intent to sell, any oleomargarine which is not marked and distinguished on the outside of each tub, package, or parcel thereof in a conspicuous place, by a placard with the word "oleomargarine" printed in English thereon; such placard to be placed in a conspicuous position in full view of the purchaser; and the said word "oleomargarine" on such placard shall be printed in plain uncondensed gothic letters, each letter not less than one inch in height, and such placards shall contain no other words thereon; and there shall also be displayed upon each tub, package or parcel containing

such oleomargarine in the same manner and in a conspicuous position, a placard with the word "oleomargarine" printed thereon in the same form as above described in this section; and when oleomargarine is sold from such package, or tub, or otherwise at retail, in print, roll, or other form, before being delivered to the purchaser, it shall be wrapped in wrappers plainly stamped on the outside thereof with the word "oleomargarine" printed or stamped thereon in English in letters one-fourth inch square, the quantity sold, and immediately following there shall appear upon the wrapper the name and address of the manufacturer. (Act Apr. 25, 1931, c. 344, §4.)

Insertion of slipper label within package is not compliance with section. Op. Atty. Gen., Feb. 10, 1933.

3855-5. Descriptive matter on packages.—Descriptive matter upon the label shall be free from any statement, design or device that is in itself misleading or that conveys or tends to convey information that the product is derived from other than the ingredients of which it is composed; and it shall be unlawful to label oleomargarine "dairy rolls," "country rolls," "Guernsey," "jersey," "Holstein" or other labeling that would indicate that said product is of dairy or creamery origin. The use of any false or misleading statement, design, or device shall not be justified by any statement given as the opinion of any expert or other person appearing on the label, nor by any descriptive matter explaining the use of the false or misleading statement, design or device. (Act Apr. 25, 1931, c. 344, §5.)

3855-6. Oleomargarine, Serving as butter.—It shall be unlawful for the proprietor of any hotel, dining room, dining car, drinking place, cafe, bakery, boat, lumber camp, mining camp, railroad camp, boarding house, or hospital, or any place where guests, boarders or patients are served with food for pay, or for any managing agent or servant of such proprietor, to serve as or for butter, or as a substitute thereof, any oleaginous substance or compound other than that produced wholly from pure, unadulterated milk or cream, unless he or they shall cause to be plainly printed in English upon every bill of fare, if one be used, and in letters not smaller than eight-point bold-faced gothic capitals, the words "oleomargarine used in place of butter" and in case no bill of fare be used the manager or person in charge of such establishment shall cause to be posted upon each side of the dining car or eating room, in a conspicuous position and in letters large enough to be distinctly seen and read from all parts of said room, placards containing on the face thereof the words in the English language "oleomargarine used in place of butter," and such person shall keep such placards continuously posted as aforesaid as long as such butter substitute be kept or used. (Act Apr. 25, 1931, c. 344, §6.)

3855-7. Commissioner of agriculture to enforce act.—The agriculture and dairy and food commissioner shall enforce the provisions of this act and in so doing shall have all the power and authority granted him under Chapter 495, Laws 1921 [§§3788 to 3873], as amended. (Act Apr. 25, 1931, c. 344, §7.)

3855-8. Violations—penalties.—Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor, the minimum punishment for which shall be a fine of twenty-five dollars or imprisonment for twenty days. (Act Apr. 25, 1931, c. 344, §8.)

3855-9. Laws repealed.—That Secs. 3851-3852-3853-3854 and 3855 General Statutes of 1923 and Chapter 10, Laws of 1923 are, and the same are hereby repealed. (Act Apr. 25, 1931, c. 344, §9.)

3855-10. Tax on oleomargarine.—There is hereby imposed, levied and assessed an inspection fee and excise tax of ten cents upon each pound of oleo-

margarine containing less than 65% of animal fats and/or oils and upon each pound of oleomargarine containing any fats or oils other than animal fat and/or oil, milk fat, peanut, cottonseed or corn oil sold, offered or exposed for sale, or given or delivered to a consumer, such fee and tax to be paid to the Commissioner of Agriculture, Dairy and Food prior to any such sale, gift or delivery. For the purposes of this Act any fractional part of a pound contained in a container, package or carton shall be deemed to be a pound. (Act Apr. 8, 1933, c. 175, §1.)

3855-11. Stamps to be affixed to packages.—All oleomargarine offered or exposed for sale or distributed in any manner in this state shall be packed in firkins, tubs, or other wooden or paper packages not before used for that purpose, and in the manner required by the laws of this state and of the United States. Before any container, package or carton containing oleomargarine upon which a fee and tax is imposed by Section One hereof is broken, or is offered or exposed for sale, gift or distribution to a consumer, there shall be securely affixed thereto the stamp or stamps hereinafter provided for in the amount of the fee and tax herein prescribed. Such stamp or stamps shall be cancelled prior to the removal from said package, container or carton of any oleomargarine, by stamping or writing across the face thereof the date of cancellation and the oleomargarine license number of the seller, if any. The Commissioner of Agriculture, Dairy and Food shall prescribe rules and regulations relative to the handling, keeping, disposal and distribution of oleomargarine and the affixing and cancellation of the stamps required by this Act. (Act Apr. 8, 1933, c. 175, §2.)

3855-12. Commissioner of Agriculture to furnish stamps.—The Commissioner of Agriculture, Dairy and Food shall prepare and have suitable stamps for use on each container, package or carton, and there shall be sufficient space thereon for the insertion of the name and address of the manufacturer of the oleomargarine in the carton, container or package to which the stamp is to be affixed, and such stamps shall be sold by the Commissioner of Agriculture, Dairy and Food to all persons applying for them. (Act Apr. 8, 1933, c. 175, §3.)

3855-13. Spoiled or unused stamps to be destroyed.—Any spoiled or unused stamps in the possession of the Commissioner of Agriculture, Dairy and Food shall be destroyed upon joint certificate of the Commissioner and the Public Examiner setting forth the number, denomination and face value of the same. Such certificate shall relieve the accountable officer from accountability in the amount thereof. (Act Apr. 8, 1933, c. 175, §4.)

3855-14. Payment by manufacturer or importer.—The payment of the inspection fee and tax and the stamping and cancellation of any container, carton or package of oleomargarine by the manufacturer or importer of any oleomargarine shall exempt all other persons from the requirements of this Act relative to the stamping of and cancellation of stamps on containers, cartons and packages of oleomargarine. (Act Apr. 8, 1933, c. 175, §5.)

3855-15. Redemption of unused stamps.—Upon written request of the original purchaser thereof and the return of any unused stamps, the Commissioner of Agriculture, Dairy and Food shall redeem such stamps and cause a refund to be made therefor. The Commissioner shall prepare a voucher showing the amount of such refund due and the auditor of state shall draw a warrant on the treasurer of state for such amount. (Act Apr. 8, 1933, c. 175, §6.)

3855-16. Violations—penalties.—Any person violating any of the provisions of the preceding sections of this Act, or any rule or regulation prescribed by

the Commissioner of Agriculture, Dairy and Food, shall be punished by a fine of not less than \$25.00 nor more than \$100.00, or by imprisonment for not more than thirty days in the county jail, and such violation shall cause for immediate cancellation of any license issued to such person by the Commissioner. (Act Apr. 8, 1933, c. 175, §7.)

3855-17. Commissioner of Agriculture to enforce act.—The Commissioner of Agriculture, Dairy and Food shall enforce the provisions of this Act, and shall on the first day of each month transfer and pay to the treasurer of state for use and benefit of the general fund of the state the funds collected under the provisions of this Act and in his hands on said dates, provided that the Commissioner may use not to exceed 25 per cent of such funds for the administration and enforcement of this Act. (Act Apr. 8, 1933, c. 175, §8.)

3855-18. Effective July 1, 1933.—This Act shall take effect and be in force from and after July 1, 1933. (Act Apr. 8, 1933, c. 175, §9.)

3858. Eggs, dockage of—Candling—Reports.

Certificate is required of wholesaler but not local merchant, though local merchant must candle eggs. Op. Atty. Gen. (135b-6(e)), Jan. 29, 1936.

3860. Eggs—Candling license.—No person shall engage in the business of buying, selling, dealing in or trading in eggs, except those retailers who do not buy direct from the producers and who do not sell in lots greater than one case, without first obtaining from the dairy and food commissioner a candling license. Such officer upon receipt of a proper application upon forms such as he may prescribe, accompanied by an annual license fee of \$1.00, shall thereupon issue to such person an annual candling license. Each license shall expire on the first day of March next after its issue.

The dairy and food commissioner shall determine the conditions under which eggs previously candled shall be recandled before sale in order to safeguard the purchaser against buying as a part of a lot, eggs unfit for human food. (As amended Feb. 8, 1937, c. 17, §1.)

3861 to 3864. [Repealed Apr. 22, 1939, c. 441, §43.]

ANNOTATIONS UNDER REPEALED SECTIONS

3861. Civil service—Office of dairy and food commissioner.

A resignation in form signed by a dairy and food inspector was not effective as a resignation where all inspectors were required to sign such resignations and file them with the commissioners. Op. Atty. Gen., Aug. 27, 1931.

Commissioner of agriculture has charge of removal of old inspectors, and they are subject to his directions and orders. Op. Atty. Gen. (325a-10), Dec. 28, 1934.

3862. Civil service—Board of Examiners.

Amended Apr. 11, 1929, c. 164.

3864. Examiners.

Commissioner has authority to temporarily fill a vacancy in dairy and food inspector's list. Op. Atty. Gen., June 24, 1933.

MISCELLANEOUS

ANIMAL FEED

3883. Articles included within terms.

Dried yeast and similar products are included in term concentrated commercial feeding stuff. Op. Atty. Gen. (136d), Apr. 12, 1934.

BARBITAL

3906-11. Sale of certain drugs prohibited.—It shall be unlawful for any person, firm or corporation to have in his, or its possession, or to sell, give away, barter, exchange or distribute barbital, except on a written prescription of a doctor of medicine, doctor of dental surgery, or doctor of veterinary medicine, lawfully practicing his profession in this state. (Act Mar. 31, 1939, c. 102, §1.)

3906-12. Definitions.—For the purposes of this Act, the word "barbital" means: barbital and any de-

rivative thereof; diethylbarbituric acid; any alkyl, aryl, metallic or halogenated derivative of barbituric acid; veronal (barbitone); propronal; ipral; dial; neonal (soneryl); sandoptal; amyral; phenobarbital (luminal); phandorn; noctal; allonal (which contains allylisopropylbarbituric acid in combination with amidopyrine) medinal; any preparation, mixture or other substance containing any of the foregoing substances. (Act Mar. 31, 1939, c. 102, §2.)

3906-13. Sales to be by licensed pharmacists.—No person other than a licensed pharmacist, shall sell barbital, and then, only as provided in this act. (Act Mar. 31, 1939, c. 102, §3.)

3906-14. Prescriptions—Refills.—For the purposes of this act, a prescription for barbital is void unless (1) it is written in ink and contains the name and address of the person for whose use it is intended; (2) it states the amount of barbital to be compounded or dispensed, with directions for its use; (3) it contains the signature and address of the prescriber, and a designation of the branch of the healing art pursued by the prescriber, and (4) it shows the date when signed by the prescriber. Every licensed pharmacist who compounds any such prescription, shall at that time, mark it in ink so as to show that it has been compounded, and the date thereof, and he shall retain such prescription in a separate file for a period of not less than two years, open to inspection by any officer of the state, county or municipal government, whose duty it is to aid and assist with the enforcement of this act. No such prescription shall be refilled, except with the written or verbal consent of the prescriber, provided that the date of such consent must be recorded, in ink or indelible pencil, upon the original prescription by the pharmacist who refills the said prescription together with the name of said pharmacist, and provided further, that in event of verbal consent it must be direct from the prescriber to the said pharmacist. Every such pharmacist shall distinctly label the container with the directions contained in the prescription for the use thereof, and the following warning: "USE ONLY AS DIRECTED." (Act Mar. 31, 1939, c. 102, §4; Apr. 10, 1939, c. 193.)

3906-15. Doctors may prescribe.—(1) A licensed doctor of medicine, or a licensed doctor of dentistry, in good faith, and in the course of his professional practice only, may prescribe, administer, and dispense barbital, or he may cause the same to be administered by a nurse or interne under his direction and supervision.

(2) A licensed doctor of veterinary medicine, in good faith, and in the course of his professional practice only, and not for use by a human being may prescribe, administer, and dispense barbital, and he may cause the same to be administered by an assistant under his direction and supervision.

(3) Nothing in this act shall prohibit the sale to, nor the possession of, barbital, by wholesale drug concerns, registered pharmacies, licensed pharmacists, licensed doctors of medicine, licensed doctors of dentistry, licensed doctors of veterinary medicine, or any bona fide hospital or other bona fide institutions wherein sick and injured persons are cared for or treated, or bona fide hospitals wherein animals are treated. (Act Mar. 31, 1939, c. 102, §5.)

3906-16. Violations—Penalties.—Any person, firm or corporation that violates any provision of this act shall be guilty of a gross misdemeanor, and upon conviction thereof, shall be punished by a fine of not to exceed \$1,000 or imprisonment in the county jail for not to exceed one year or by both such fine and imprisonment. (Act Mar. 31, 1939, c. 102, §6.)

MILK, CHEESE AND BUTTER

3907. Discriminations.

Phrase "actual cost of transportation" in fair practices act held too uncertain to form base for crime. State v. Northwest Poultry & Egg Co., 203M438, 281NW753. See Dun. Dig. 2417a.

3915. Same—Inspection of rooms by dairy and food commissioner—Etc.

Commissioner may require cream to be brought to creamery or cream station before testing, grading, weighing and transferring. Op. Atty. Gen. (135b-6(f)), May 21, 1936.

3920. [Repealed].

Repealed by Laws 1931, c. 344, §9, ante, §3855-9.

3926. Sale, etc., of adulterated milk, cream, etc.

Milk and cream made by mixing and heating milk powder, water and butter fat together, and running through a homogenizer, is homogenized milk within regulations of commissioner of agriculture. Op. Atty. Gen., Dec. 11, 1933.

Cheese compound for flavoring pop corn is not contrary to this section. Op. Atty. Gen. (135b-4), Oct. 25, 1935.

3928-1. Butter imitations prohibited.—No person, firm or corporation shall by himself, his servant or agent, or as a servant or agent of another, manufacture, use, sell, distribute, offer or expose for sale or distribution in the State, or have in his possession with intent to use, sell, or exchange any artificial or imitation flavoring preparation to be used in fats, oils, or any article of food to produce a flavor in imitation of that of natural butter, the product of the dairy. Bacterial culture used for ripening or souring or fermenting milk or skimmed milk in the production of any such culture in milk or skimmed milk shall not be considered an artificial or imitation flavoring preparation. (Act Mar. 27, 1931, c. 97, §1.)

3928-2. Violation a misdemeanor.—Any person who shall violate any provision of this act shall be deemed guilty of a misdemeanor. (Act Mar. 27, 1931, c. 97, §2.)

3928-3. Commissioner of agriculture to enforce law.—The Commissioner of Agriculture and Dairy and Food shall cause the provisions of this act to be enforced, and to that end he shall exercise all power and authority conferred upon the then office of Dairy and Food Commissioner by the provisions of chapter 495, Laws 1921 [§§3788 to 3873], known as the "Minnesota Dairy and Food Law." It shall be the duty of every prosecuting officer to whom the commissioner shall report any violation of this act, to cause appropriate proceedings to be instituted in the proper courts and prosecuted without delay for enforcement of the penalties herein specified. (Act Mar. 27, 1931, c. 97, §3.)

CREAM GRADING AND TESTING

3928-4. Definitions.—As used in this act, the following words and phrases in this act shall unless the same be inconsistent with the context, be construed as follows:

(a) The term "person" shall mean, "individual," "partnership," "corporation," and "association."

(b) The term "cream buying station" shall mean any place other than a creamery, where deliveries of cream are weighed, sampled, and/or tested for purchase on a butterfat basis.

(c) The term "creamery" shall mean any place where cream, delivered by two or more persons, is churned into butter for commercial purposes.

(d) The term "Babcock Test" shall mean the official Babcock test for milk and cream as set forth in Chapter 154, Babcock Test Law of 1927. (Act Mar. 20, 1935, c. 61, §1.)

3928-5. Grades of cream and butter fat.—All cream and/or butterfat sold and/or purchased shall be graded and paid for on the basis of the following established grades:

Sweet Cream Grade shall consist of fresh, clean, fine-flavored cream, the acidity of which calculated as lactic acid shall at no time have exceeded .20% in cream.

Grade One shall consist of cream that is clean, free from undesirable odors and flavors, the acidity of

which calculated as lactic acid shall at no time have exceeded .60% at the time and place of purchase.

Grade Two shall consist of cream that is too acid to grade as Grade One and/or contains undesirable odors and flavors in a moderate degree.

Unlawful Cream shall consist of cream which contains dirt, filth, or other foreign matter which makes it unfit for human consumption. (Act Mar. 20, 1935, c. 61, §2.)

3928-6. To affix condemnation tags.—All licensed cream buyers shall affix to the container of condemned unlawful cream, condemnation tags provided by the Department of Agriculture, Dairy and Food, and shall also place in such unlawful cream a harmless, permanent coloring matter so as to prevent the said unlawful cream from being sold for human consumption. (Act Mar. 20, 1935, c. 61, §3.)

3928-7. Cream to be shipped daily.—The cream buyer shall ship all cream purchased by him within 24 hours of the time of purchase of said cream, except where acts of Providence beyond his control prevent compliance with this provision. (Act Mar. 20, 1935, c. 61, §4.)

3928-8. Purchases to be on basis of grades.—All purchases of cream shall be on the basis of the grades hereinbefore defined. All purchasers of cream and/or butterfat shall maintain a reasonable price differential for such grades and at no time shall this differential be less than one cent per pound butterfat between grades. The daily current price being paid for each grade shall be posted in a prominent place in each cream buying station or creamery provided, however, that this requirement as to the posting of the daily current price shall not be applied to those creameries or cream buying stations that do not make daily cash purchases. (Act Mar. 20, 1935, c. 61, §5.)

Buyer of cream may not pay daily cash price as posted during a month period and at end of month pay an additional two cents per pound as compensation to farmer for bringing his cream to station, but this would not be violation of unfair discrimination under §10464. Op. Atty. Gen. (135b-6(f)), Oct. 12, 1936.

3928-9. Monthly test to be made.—A minimum of one sediment test per month must be made of the cream of each producer patron of a creamery or of any cream buyer. If such sediment test is unsatisfactory, then successive tests on future deliveries of cream marketed must be made and must conform to the definition for Sweet Cream, Grade One or Grade Two cream before the marketer of said cream shall be entitled to receive the price being paid for the grade of cream offered. (Act Mar. 20, 1935, c. 61, §6.)

3928-10. Must have licensed cream buyer.—A licensed cream buyer, duly qualified to grade and test cream, shall be maintained in each creamery and in each cream buying station where cream is purchased. A grading and testing license shall be issued by the Department of Agriculture, Dairy and Food, to such person who shall have passed a satisfactory examination in person and shall have proved by actual demonstration before an inspector or authorized agent of the Department that he is competent and qualified to grade and test cream and that he is fully conversant with all the requirements of this Act. Every such license shall be issued for a period ending on the thirty-first day of December following, and shall not be transferable. The fee for each such annual license shall be One Dollar, and shall be paid to the Department of Agriculture, Dairy and Food, or its agent before such license or renewal thereof is issued. (Act Mar. 20, 1935, c. 61, §7.)

3928-11. Agricultural department to enforce act.—The Department of Agriculture, Dairy and Food shall be charged with the enforcement of the provisions of this Act, and shall have the authority to promulgate such rules and regulations as are necessary to the enforcement thereof. (Act Mar. 20, 1935, c. 61, §8.)

Commissioner may require cream to be brought to creamery or cream station before testing, grading, weighing and transferring. Op. Atty. Gen. (135b-6(f)), May 21, 1936.

3928-12. Violations—penalties.—Any violation of any of the provisions of this Act is hereby declared to be a misdemeanor, and any person, whether individually, or as a member of a partnership, or as an agent or officer of a corporation or any corporation, who shall be convicted of such violation either on his or its own behalf or in the interest of any other individual or corporation, association, or partnership, shall be fined not less than \$25.00, nor more than \$100.00 and such person's or corporation's license may be revoked on second offense. (Act Mar. 20, 1935, c. 61, §9.)

3928-13. Provisions severable.—If any section, subdivision, sentence or clause in this act shall for any reason, be held void or unconstitutional, such decision shall not affect the validity of any other portion of this act. (Act Mar. 20, 1935, c. 61, §10.)

3929. Milk and cream cans must be sterilized.

Statute is violated if truck driver transfers cream from farmer's container to creamery container and immediately return seller's container without sterilizing it. Op. Atty. Gen. (135b-6(f)), May 21, 1936.

3933. Certain butter compounds must be labeled.

This section does not supersede §3824. Op. Atty. Gen. (135b-5), July 12, 1935.

3935-1. Licensing and regulating creameries, cheese factories, etc.

A concern operating a large number of cream stations cannot require department to transfer licenses from one station to another when a station is discontinued. Op. Atty. Gen., Jan. 15, 1934.

Section does not cover ice cream manufacturing plants unless they can be classified as milk plants. Id.

EGGS AND EGG PRODUCTS

3935-11. Egg dealers to be licensed.—No person shall engage in the business of buying, selling, dealing in or trading in eggs without first having obtained from the Department of Agriculture, Dairy and Foods, hereinafter called the department, an egg candling license to conduct such business. Such license shall be issued upon proper application and the payment of one dollar as a license fee. All licenses so issued shall expire upon the first day of March next following the issuance thereof, but may be renewed from time to time for additional periods of one year upon presentation to the department of proper application therefor and the payment of a similar license fee. (Apr. 26, 1937, c. 471, §1.)

3935-12. Sale of unfit eggs prohibited.—No person shall sell, offer or expose for sale, or have in his possession for sale, any egg unfit for human food, unless the same is broken and then denatured so that it cannot be used for such purpose, except that eggs in unbroken, artificially colored shells to be sold for animal food only under direct supervision of the department, may be kept for sale and sold for such purposes. For the purposes of this act, an egg shall be deemed unfit for human food if it be addled or mouldy, possess a black rot, a white rot, or a blood ring or blood spot; or if it has an adherent yolk, or a bloody or green white, or if it be incubated one day or more; or if it consists in whole or in part of a filthy, decomposed or putrid substance. (Apr. 26, 1937, c. 471, §2.)

3935-13. Dockage.—No dealer, in buying or selling eggs, shall take or give a greater or less dockage for eggs unfit for human food as herein defined, than the actual dockage as determined by the correct candling of the eggs purchased or sold, nor shall he undergrade eggs purchased nor overgrade eggs sold as such grading is determined and classified from time to time by the department, and every such dealer shall keep such candling records as may be required by the rules and regulations of the department, which records shall be open at all time for department examination. The department shall be charged with the enforcement of

this act, and shall have the authority to promulgate all such rules and regulations as are necessary to the enforcement thereof. Provided however, that nothing in this act shall be construed to make the grading of eggs compulsory. (Apr. 26, 1937, c. 471, §3.)

3935-14. Candling certificates.—There shall be placed on the top layer under the top flat of each case of candled eggs, and one attached to the end of the case, by the person candling the same a candling certificate. The certificate shall be in such form as the department may by regulation prescribe. Such certificate shall show the name of the state, the date of candling of the eggs contained in the case in which it is placed with the statement of the grade thereof, over the initials or number of the candler, and the name and license number of the dealer. (Apr. 26, 1937, c. 471, §4.)

3935-15. License for re-sale dealers.—No person shall engage in the business of breaking eggs for resale without first having secured from the department of agriculture a license to conduct such business, such license to be issued upon proper application and the payment of fifty dollars as a license fee. All licenses so issued shall expire on the first day of March next following the issuance thereof, but may be renewed from time to time for additional periods of one year upon presentation of proper application therefor and the payment of a similar license fee. The licensee shall at all times comply with the rules and regulations of the department in respect to the conduct of such business and any violation of the rules and regulations so established shall be cause for revocation of such license upon notice and after hearing, upon proper charges and specifications, filed with the department and served upon the licensee. (Apr. 26, 1937, c. 471, §5.)

3935-16. Department to supervise egg business.—The department is hereby vested with the power and authority to supervise, regulate and make reasonable rules and regulations not inconsistent with the law, relative to grading, candling, breaking, purchasing and selling of eggs and egg products for the purpose of preserving and protecting the public health. In addition hereto, it is the express purpose herein that inasmuch as the breaking of eggs for resale is a matter of state concern, the surroundings in which such product is handled should be maintained in a sanitary condition, and, therefore, the department shall establish reasonable rules and regulations, not inconsistent with law, relative to the inspection of all establishments wherein the business of breaking eggs for resale is maintained, and whenever the sanitary conditions of any such establishments are such that the product is rendered, or is likely to be rendered, unclean, unsound, unhealthful, unwholesome or otherwise unfit for human consumption, it shall have authority to revoke such license to break eggs for resale until such time as the department is satisfied that such establishment is maintained in a sanitary condition. Such rules and regulations shall be approved as to form and legality by the attorney general and the same shall be published twice in a legal newspaper of general circulation published at the capitol of this state. From and after the tenth day succeeding the date of last publication such rules and regulations shall have full force and effect. An affidavit of such publication, setting forth the said rules and regulations in full and the dates of such publication thereof shall be made by the publisher of such newspaper or by the manager or agent of such publisher, and shall be kept on file in the office of the department with the original of such rules and regulations. Such affidavit of publication, or a duly certified copy thereof, shall be prima facie evidence of the facts therein contained and of the establishing, adopting and publishing of the rules and regulations. The department shall have the right from time to time to adopt different rules and

regulations in the same manner as herein set forth. (Apr. 26, 1937, c. 471, §6.)

Inspection fees may be collected under §6240-18½f and it is not necessary to establish a separate regulation under this act. Op. Atty. Gen. (135b-6(e)), Dec. 7, 1938.

3935-17. License fees and fines to be credited to egg inspection fund.—All license fees collected hereunder, together with all fines paid for any violation of this act, shall be paid into the state treasury and credited to the Egg Inspection Fund hereby created. The money so derived is hereby appropriated to the department to compensate for and meet the expense of inspection and supervision, the cost of publication and of administration, and enforcement generally of this act. (Apr. 26, 1937, c. 471, §7.)

3935-18. Violation a misdemeanor.—Any person who violates any provision of this act shall be guilty of a misdemeanor. (Apr. 26, 1937, c. 471, §8.)

3935-19. Inconsistent acts modified or superseded.—All acts or parts of acts now in effect inconsistent with the provisions of this act are hereby superseded, modified or amended to conform to and give full force and effect to the provisions of this act. (Apr. 26, 1937, c. 471, §9.)

Sec. 10 of Act Apr. 26, 1937, cited, provides that the Act shall take effect from its passage.

PAINTS

3936. Linseed oil.
174M496, 219NW764.

POTATOES

3945-1 Potatoes to be graded and tagged.—Potatoes when packed for carload shipments or offered for sale by persons other than the growers or producers thereof in carload lots and potatoes, when packed for truck-load shipments or offered for sale in Minnesota in truck-load lots, other than by the producer, shall be tagged, labeled, or branded as follows:

GRADES

U. S. No. 1, Minnesota Commercial Grade, U. S. No. 2, Unclassified and Minnesota Certified Seed.

The U. S. Grades shall conform in all respects to the requirements laid down by the U. S. Department of Agriculture.

The Minnesota Commercial Grade shall conform in all respects to the U. S. No. 1 grade but in order to allow for variations incident to proper grading and handling, a tolerance of defect of four per cent, in weight, additional on number one grade may be allowed for this grade, but not to exceed one per cent shall be allowed for potatoes affected by soft rot.

The Unclassified shall consist of all potatoes not meeting the requirements of the foregoing grades, and shall be sold either as such, or on a certificate of inspection duly made by an authorized inspector of the State Department of Agriculture. (Act Mar. 18, 1931, c. 70, §1; Jan. 5, 1934, Ex. Ses., c. 41, §1.)

This act seems to be superseded by Act Apr. 13, 1935, c. 164. See §§3945-12 to 3945-18d.

3945-2. To be labeled.—Every closed package containing potatoes offered or exposed for sale at wholesale or at retail in cities of the first and second class by persons other than the growers thereof, shall bear upon the outside of each package either by brand, tag, or label in plain letters and figures the grade of the potatoes therein contained and the minimum weight when packed. (Act. Mar. 18, 1931, c. 70, §2.)

Potatoes from outside the state are required to bear the grade tags and weight specifications. Op. Atty. Gen., Aug. 28, 1931.

Potatoes put in sacks which are left untied may be sold without being labeled. Op. Atty. Gen., Aug. 28, 1931.

3945-3. Definitions.—"Closed Package" means any container which shall be either sewed, tied, nailed or otherwise secured. (Act Mar. 18, 1931, c. 70, §3.)

3945-4. Marks and Brands.—The marks and brands prescribed in this Act may be accompanied by additional marks or brands which are not inconsistent with, or more conspicuous than, and which do not in any way obscure the marks and brands prescribed. (Act Mar. 18, 1931, c. 70, §4.)

3945-5. Who may pack and ship.—No person other than the growers thereof shall pack for sale, ship for sale, offer or consign for sale, or sell potatoes in closed packages in carload lots, not branded in accordance with the provisions of this Act; also no person shall pack for sale, ship for sale, offer or consign for sale, or sell in closed packages in truckload lots, other than the producer, which are not tagged, labeled, or branded in accordance with the provisions of this Act. (Act Mar. 18, 1931, c. 70, §5.)

3945-6. Not to impair freedom of contract.—Nothing in this act contained shall be construed in any manner to impair the freedom of contract between individuals relative to the sale and disposal of potatoes between the owners thereof and the persons purchasing the same. When any seller and buyer of potatoes shall by a contract in writing agree to sell and dispose of to any person potatoes in any lots or quantities of the grades and varieties specified herein, or of any other grade and variety or quality concerning which the persons desire to contract, he shall have the legal right to do so and shall be bound by the terms of such contract so entered into, and in case any seller attempts to tender in fulfillment of any such contract potatoes of a lower standard or quality than those specified in such a contract the purchaser of the same shall have the legal right to either reject the same or accept them upon a tolerance basis commensurate in value between the market price of the grade and quality contracted for and the grade and quality of the potatoes tendered in delivery thereon. (Act Mar. 18, 1931, c. 70, §6.)

3945-7. Determination of controversies.—In determining controversies and standards between the parties as to the quality and condition of potatoes offered for sale or tendered in performance of contracts for sale in this state, the certificates of a duly authorized and commissioned inspector of the State of Minnesota shall be prima facie evidence both of the grade and quality of the potatoes offered for sale or tendered in performance of any contract and of the amount of tolerance existing in the designated quantity of said potatoes at the time and place at which said inspection is made. (Act Mar. 18, 1931, c. 70, §7.)

3945-8. Not to pay inspectors.—No person shall directly or indirectly hire, or pay the compensation of any inspector whose duty it is to determine the grade or quality of potatoes offered or exposed for sale in the State of Minnesota, other than the State of Minnesota whose duly constituted officers shall in due form and accordance with law issue commissions to inspectors duly authorizing and empowering them to act as such.

Nothing herein shall prevent any person paying the proper inspection fees, duly established to the proper persons duly authorized to receive the same, but the payment or allowance of any gratuity, commission or allowance in addition thereto shall constitute the crime of bribery and shall be punished by law as such. (Act Mar. 18, 1931, c. 70, §8.)

3945-9. Certain acts unlawful.—It shall be unlawful for dealer or person merchandising potatoes in the State of Minnesota with the intent to deceive, to attach any tag, label or brand to any closed package or carload of potatoes, any grade, certificate, brand or tag, which does not reasonably represent the true and correct grade, quality or standard of the grade, quality or brand of the potatoes contained in said closed package or carload, at the time of attaching

the same, and the condition of said carloads and closed packages when said tags, labels, certificates or brands are found attached to them shall be prima facie evidence of the condition of the same at the time of attaching. (Act Mar. 18, 1931, c. 70, §9; Jan. 5, 1934, Ex. Ses., c. 41, §2.)

Mason's Stat., §10047, furnishes a means of enforcing the provisions of this act not covered by penalty provision in the last paragraph of §9. Op. Atty. Gen., Oct. 19, 1931.

3945-10. Same—penalty—cancellation of license.—Any person violating any of the provisions of this act shall be guilty of a simple misdemeanor for the first offense and a gross misdemeanor for each subsequent offense, and such conviction may be proper cause for the suspension or forfeiture or cancellation of any license held by such person so convicted. (Act Mar. 18, 1931, c. 70, §10; Jan. 5, 1934, Ex. Ses., c. 41, §3.)

3945-11. Commissioner to enforce act.—It shall be the duty of the commissioner of agriculture to enforce the provisions of this Act. (Act Mar. 18, 1931, c. 70, §11; Jan. 5, 1934, Ex. Ses., c. 41, §4.)

3945-12. Potato grades.—The intent and purpose of this Act is to regulate the grade of potatoes when such potatoes are offered for sale by any person, grower, firm, dealer, trucker, association, organization or corporation or any other person, either by wholesale or retail, or in any other manner; provided, however, that the provisions of this act shall not apply to the grower when hauling, transporting, delivering, consigning, or selling potatoes of his own production and excepting Minnesota grown potatoes marketed between July 1st and September 15th. (Act Apr. 13, 1935, c. 164, §1.)

3945-13. Definitions.—The following terms, whenever used in this act, or in rules and regulations hereafter promulgated by the Commissioner of Agriculture, shall have the meaning as indicated:

(a) "Commissioner" shall mean the Commissioner of Agriculture, Dairy & Food of the State of Minnesota.

(b) The term "Potatoes" shall mean all potatoes offered for sale within the State of Minnesota.

(c) "Container" or "Package" shall mean cloth, burlap, or fibre sacks, barrels, boxes, crates, cartons, hampers or baskets.

(d) "Person" as used herein shall mean any grower, dealer, shipper, trucker, society, association, organization, corporation, or their agents or representatives. (Act Apr. 13, 1935, c. 164, §2.)

3945-14. Standard grades.—The standard grades for Minnesota potatoes shall be the United States potato grades and shall conform in all respects and be identical with the latest standards established by the United States Department of Agriculture for potatoes all of which grades and standards are hereby adopted and shall be used in this state in the grading of potatoes for sale, provided that potatoes not conforming to the established United States potato grades may be sold in this state if labeled, tagged or branded in the same manner as graded potatoes, except that in place of specifying the grade, the word "unclassified" shall be used; provided further that Certified Seed Potatoes inspected and certified under the authority of the commissioner of agriculture shall not be affected by this act but shall be graded and tagged as required under the Seed Potato Certification Act, being Laws 1927, Chapter 115 [§§6139-1 to 6139-13]. (Act Apr. 13, 1935, c. 164, §3.)

3945-15. All shipments must be tagged.—(a) It shall be unlawful for any person, firm, trucker, association, organization or corporation, or agent, representative or assistant to any person, firm, trucker, association, organization, or corporation except those hereinbefore exempted, to sell, transport, deliver or consign potatoes prepared for market unless each container has been legibly and conspicuously tagged,

branded, labeled and stenciled (before being moved from the premises of the person or persons responsible for the grading and packing), and the name of the grade legibly placed thereon, together with the true net contents expressed in weight.

(b) Bulk shipments shall be accompanied by two cards not less than four by six inches in size placed in the inside of the car near each door. Likewise cards in size herein described shall be prominently placed on all bulk shipments made by truck or other conveyance. Upon each card shall appear the name and address of the consignor, the name of the grade, the name of the loading station, the date of loading and the name and address of the consignee, if known. (Act Apr. 13, 1935, c. 164, §4.)

Act applies to potatoes shipped out of state but does not apply to growers. Op. Atty. Gen. (135b-6(h)), June 20, 1935.

3945-16. Must not be sold or transported unless tagged.—It shall be unlawful for any person, as defined in this act, to sell, deliver or consign potatoes which have not been graded and branded or tagged to conform to the requirements of the grade declared. The grade declared shall conform to the provisions of this act.

It shall be unlawful for any common carrier by railroad or any person to transport or deliver in any manner whatever potatoes which have not been tagged or branded, and which tag or brand shall show the claimed grade of said potatoes; provided, that this section shall be subject to the conditions of Section 1 of this act.

No person shall transport for sale any potatoes on the highways who is the owner thereof, unless such potatoes are being transported for the purposes set forth in Section 1 of this act, unless such potatoes have been graded and branded to conform to the requirements of the grade declared. The grade declared shall conform to the provisions of this act. (Act Apr. 13, 1935, c. 164, §5.)

3945-17. Certificate of inspectors.—In determining controversies and standards between the parties as to the quality and condition of potatoes offered for sale or tendered in performance of contracts for sale in this state, the certificates of a fully authorized and commissioned inspector of the commissioner of agriculture of the State of Minnesota shall be prima facie evidence both of the grade and quality of the potatoes offered for sale or tendered in performance of any such contract. (Act Apr. 13, 1935, c. 164, §6.)

3945-17a. Payment of compensation—Certain acts to be bribery.—No person shall directly or indirectly hire, or pay the compensation of any inspector whose duty it is to determine the grade or quality of potatoes offered for sale in the State of Minnesota, other than the State of Minnesota, whose duly constituted officers shall in due form and accordance with law issue commissions to inspectors duly authorizing and empowering them to act as such.

Nothing herein shall prevent any person paying the proper inspection fees, duly established to the proper persons duly authorized to receive the same, but the payment or allowance of any gratuity, commission or allowance in addition thereto shall constitute the crime of bribery and shall be punished by law as such. (Act Apr. 13, 1935, c. 164, §7.)

3945-18. Commissioner of agriculture to enforce act.—The Commissioner of Agriculture is hereby charged with enforcement of this Act and is given power to do so, both unto himself and to his duly appointed representatives, and he shall at all times have access to all buildings, yards, warehouses, storage and transportation facilities in which potatoes are kept, stored, handled or transacted, to inspect the same as to grade, quality, condition, and packs, tagging, branding and labeling. (Act Apr. 13, 1935, c. 164, §8.)

3945-18a. Violation a misdemeanor.—Whoever violates this Act or any part or provision thereof,

by not grading potatoes as herein required, or by not tagging or branding containers as herein required, or by removing or altering any tag or brands placed upon or attached to any containers as in this Act required, unless ordered to do so by the Commissioner of Agriculture, or his duly appointed representative or representatives, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than \$10.00, nor more than \$100.00 or by imprisonment in the county jail of not less than 30 days nor more than three months, or by both such fine and imprisonment in accordance with the discretion of the Court. (Act Apr. 13, 1935, c. 164, §9.)

3945-18b. Acts severable.—If any section, subsection, sub-division, sentence, clause, paragraph or phrase of this Act is for any reason held to be unconstitutional or void, such decision shall not affect the validity of the remaining portions of this Act, so long as sufficient remains of this Act to render the same operative and reasonably effective for carrying out the main purpose and intention of the Legislature in enacting the same, as such purpose and intention may be disclosed by this Act. (Act Apr. 13, 1935, c. 164, §10.)

3945-18c. Inconsistent acts repealed.—All acts and parts of Acts inconsistent herewith are hereby repealed. (Act Apr. 13, 1935, c. 164, §11.)

3945-18d. Effective July, 1935.—This Act shall be in full force and effect from and after July 1st, 1935. (Act Apr. 13, 1935, c. 164, §12.)

3945-18e. Potatoes shall be inspected.—That all potatoes offered for sale or shipped for sale by any person in carload lots in the state of Minnesota shall be inspected by an authorized Federal-State inspector to determine the grade, quality and condition of such shipment. Provided, however, that this act shall not apply to Minnesota grown potatoes between July 1st and September 15th of each year. (Apr. 19, 1937, c. 282, §1.)

3945-18f. Place of inspection.—Inspection of carload lots of potatoes shall be made at the point of origin when inspectors are available at such points. In cases where an authorized inspector is not available at such shipping points or adjacent to such shipping points, it shall be the duty of the commissioner of agriculture to designate points at which cars of potatoes may be inspected. (Apr. 19, 1937, c. 282, §2.)

3945-18g. Standard grades.—The standard grades for all Minnesota potatoes shall be limited to the US grades except certified seed potatoes produced under the supervision of the Seed Potato Certification Division of the University Farm which shall be graded and tagged as required under the Seed Certification Law. (Apr. 19, 1937, c. 282, §3.)

3945-18h. Commissioner of agriculture to promulgate rules.—The commissioner of agriculture shall promulgate rules and regulations deemed necessary to the proper enforcement of the provisions of this act after hearing given 30 days notice of such action and the publication of such proclamation two times in at least three papers of general circulation within the state. (Apr. 19, 1937, c. 282, §4.)

3945-18i. Commissioner shall enforce Act.—The commissioner of agriculture shall be charged with the enforcement of the provisions of this act and all the rules and regulations published thereunder. (Apr. 19, 1937, c. 282, §5.)

3945-18j. Fees.—Fees for inspection shall be determined by the commissioner of agriculture. (Apr. 19, 1937, c. 282, §6.)

3945-18k. Definitions.—The following terms when used in this act shall have the meaning as indicated:

(a) "Commissioner" shall mean the commissioner of agriculture, dairy and food of the state of Minnesota.

(b) "Potatoes" shall mean all the potatoes produced within the state of Minnesota and all potatoes offered for sale in carlots within the state of Minnesota.

(c) "Person" as used herein shall mean any growers, dealer, shipper, society, association, organization, corporation or their agents or representatives. (Apr. 19, 1937, c. 282, §7.)

3945-18l. Violation a misdemeanor.—Whoever shall violate any provisions of this act or any rules or regulations made or published thereunder by the commissioner of agriculture shall be guilty of a misdemeanor. (Apr. 19, 1937, c. 282, §8.)

Sec. 9 of Act Apr. 19, 1937, cited, provides that the Act shall take effect from its passage.

FRUITS

3945-21. Commissioner of agriculture to regulate sale of strawberries and raspberries.—All fresh strawberries and raspberries that are offered for sale, packed for sale, or shipped for sale by any person other than the grower thereof in the State of Minnesota shall be handled and sold under rules and regulations made and designated by the Commissioner of Agriculture, Dairy and Food. The grades and the regulations controlling and handling of strawberries and raspberries shall be only determined by the Commissioner of Agriculture, Dairy and Food after due notice and public hearings with the producers of the same have been held. (Act Apr. 22, 1933, c. 420, §1.)

3945-22. Commissioner to enforce rules and regulations.—The Commissioner of Agriculture, Dairy and Food shall be charged with the enforcement of the provisions of this act and all the rules and regulations made and published thereunder. (Act Apr. 22, 1933, c. 420, §2.)

3945-23. May revoke license.—The Commissioner of Agriculture, Dairy and Food may revoke any license issued under his authority upon proof of violation of the provisions of this act and any of such rules and regulations made in pursuance thereof. (Act Apr. 22, 1933, c. 420, §3.)

AGRICULTURAL SEEDS

3957-1. Definitions.

Definition of seed grains in Laws 1935, c. 50, §9, controls and governs as to such law and supersedes this act for purpose thereof. Op. Atty. Gen. (86a-44), Mar. 21, 1935.

County board in purchasing and selling seed grains to farmers under Seed Loan Act is not governed by this act. Op. Atty. Gen. (833f), Mar. 30, 1935.

3957-2. Powers of commissioner of agriculture—Rules and regulations—Investigations—Access to premises—Complaints of violations—Hearings—Procedure—Contempt—State seed laboratory etc.—Sub. division 1. Powers of commissioner of agriculture—Rules and regulations—Investigations—Access to premises, etc.—The commissioner of agriculture is hereby authorized and it shall be his duty to execute this law and to that end he may make and enforce such rules and regulations as in his judgment shall be necessary. He shall investigate the subject of weed seeds and other matters pertaining to seeds and to that end may require information from county agents, dealers in agricultural seeds, transportation companies, local weed inspectors and experiment stations as to the presence of inert matter and of weed seeds or any other foul seeds and their control in the localities where such officials or persons reside or have jurisdiction. He or his agents or assistants may enter and have free access at all reasonable hours upon and into any premises or structure to make examination of any seeds, whether such seeds are upon the premises of the owner of such seeds or on other premises,

or in the possession of any warehouse, elevator or railway or other transportation company and upon the tendering of payment therefor at the current value thereof, may take any sample or samples of such seed.

Subd. 2. Complaints of violations—Hearings.—For the purpose of enforcing the provisions of this act, the commissioner shall have the authority either on his initiative or upon complaint being filed with him for any alleged violation of the provisions of this act or any rule or regulation issued thereunder, or upon information furnished by an inspector of the department of agriculture, to hold hearings and conduct such investigations as he may deem advisable. He shall have and is hereby granted full authority to issue subpoenas requiring the attendance of witnesses before him of books, papers and other documents, articles or instruments and to compel the disclosure by such witnesses of all facts known to them relative to the matter under investigation. He shall have full authority to administer oaths and to take testimony; and may make a report thereon, which shall be prima facie evidence of the matters therein contained. All parties disobeying the orders or subpoenas issued hereunder by the commissioner shall be guilty of contempt as in proceedings in district courts of the state and may be punished in like manner.

Subd. 3. No action against commissioner.—No action or claim for damages shall be allowed or shall be sustainable against the commissioner or anyone acting for him or by his authority in respect to the enforcement of this section.

Subd. 4. State seed laboratory.—A state seed laboratory shall be maintained for the purpose of examining seeds for specific purity, kinds and amounts of inert matter and of weed seeds and for making germination tests and any other seed studies deemed by the commissioner as advisable.

Subd. 5. Samples for examination, etc.—Any person of this state may, in accordance with the rules and regulations of the commissioner and by prepaying the transportation charges and such fees as hereinafter mentioned, send a sample or samples of seed to the state seed laboratory or to the commissioner for examination, analysis and determination and receive a report of such examination, analysis or determination when completed. Said report shall constitute and be a certificate of the state seed laboratory giving results of such examination, analysis or determination of said seed sample and said certificate shall be presumptive evidence of the facts therein stated.

Subd. 6. Fees for tests.—The commissioner is authorized and it is hereby made his duty to collect a fee or fees as herein provided for making tests, analysis or determinations of seeds and the amount of such fee or fees shall be received by him before any report of seeds examined shall be given to the person sending the same. Except that any person may send as many as five such samples during any one year and receive report of same after examination has been made, without paying the required fee. All fees and moneys collected shall be deposited in the state treasury, as other departmental receipts are deposited, but shall constitute a separate account known as the "seed act account" which is hereby created, set aside and appropriated as a revolving fund to assist in meeting the expense of inspection, laboratory and other services rendered as herein provided.

Subd. 7. Schedule of fees.—The fee or fees to be paid as herein referred to for each and every germination test shall be 25 cents for corn, peas, beans, cereals and all such larger seeds, and 30 cents for alfalfa, clover, timothy and similar seeds, and 40 cents for the blue grass, fescues and similar smaller grass seeds.

For pure-seed analysis and determination the fee or fees shall be:

(1) 25 cents each for wheat, oats, barley, rye, emmer, vetch and buckwheat.

(2) 50 cents each for millet, sudan grass, alfalfa, red clover, sweet clover, rape, timothy, rye grass, slender wheat grass, alsike clover and all similar seeds and for mixtures of any seeds hereinbefore in subdivision 7 (2) named.

(3) One dollar each for white clover, all mixtures of clovers, orchard grass, and wheat grass, and all uncleaned seeds.

(4) Two dollars each for Kentucky blue grass, red-top, and bent grasses, and all lawn grass mixtures.

For the purpose of carrying out the provisions of this section, the commissioner shall designate the proper charge to be made for seeds not herein mentioned and sent him for test, analysis and determination.

Subd. 8. Violation of law—Hearings—Prosecutions.—When by analysis or otherwise it shall be made to appear that any person has violated any of the provisions of this act or any rule or regulation issued thereunder, it shall be the duty of the commissioner to notify said person in whose possession the seed in question was found or the owner thereof, if known, and designate a time and place for a hearing for receiving evidence as to such alleged violation. After such hearing or upon failure of said person to appear at the time and place fixed therefor, the commissioner may transmit the facts so found to the attorney general and it shall be the duty of the attorney general, or in the discretion of the commissioner, he may act through the county attorney of the county in which said violation was committed, whose duty it shall then be to forthwith institute proceedings and prosecute the same against the person charged with such violation. It is hereby made the duty of the county attorney to prosecute any and all such cases submitted to him by the commissioner or the attorney general. (As amended Apr. 20, 1939, c. 307, §1.)

3957-3. Labels for packages—Contents—Weed seed tolerance.—Subdivision 1. **Labels for packages—Contents—Weed seed tolerance.**—The owner or person in possession of each and every package, parcel or lot of agricultural seed as herein defined, which contains one pound or more of such agricultural seed, whether in package or in bulk, shall affix thereto in a conspicuous place on the exterior of the container of such agricultural seed a written or printed label in the English language in legible type or copy not smaller than eight point heavy Gothic caps; such label shall contain a statement specifying:

(a) The commonly accepted name of the kind or kinds of such agricultural seed; if the name of a special variety or strain of such seed is used, it must be the true name of such special variety or strain.

(b) The approximate percentage germination test made of such agricultural seed together with the date of said test of germination.

(c) The approximate total percentage by weight of weed seeds of all species and the name and approximate number per pound of agricultural seeds of each of the kinds of weed seeds hereinafter specified, whenever the total number of any or all of such kinds exceeds ten per pound of agricultural seeds: Quack grass (*argropyron repenes*), canada thistle (*carduus arvensis*), perennial sow thistle (*conchus arvensis*), doddars (*cuscuta* spp.), leafy spurge (*euphorbia esula*), ox eye daisy (*chrysanthemum leucanthemum*), and buckhorn plantain (*plantago lanceolata*); provided, that whenever such weed seeds are found in number not exceeding ten of all kinds in the aggregate per pound of agricultural seeds, the word "trace" together with the name of each and every kind of weed seeds so found shall appear on the label.

(d) The approximate percentage by weight of the agricultural seed exclusive of inert matter, weed seeds and of other agricultural seeds, which are distinguishable by their appearances.

(e) If such agricultural seed is grown in this state, the words "grown in Minnesota" and in the case

of corn, the name of the county in which grown, and if not grown in this state, the name of the state or country in which such corn was grown, and in the case of clovers and alfalfa seeds, when any portions thereof are from countries other than the United States, the name of the country where grown, and such seeds shall bear the coloring designated by the "federal seed act" of 1912 as amended April 26, 1926.

(f) The full name and address of the seedsman, importer, dealer or agent or other person selling, offering or exposing for sale said agricultural seed. It shall be unlawful for any person to expose seed for sale or any sample representing seed for sale for which ownership or responsibility is not acknowledged.

Subd. 2. Violations.—It shall be unlawful for any person to sell, offer or expose for sale or distribution in this state or to have in possession with intent to sow, any agricultural seed or mixtures of agricultural seeds for seeding purposes when:

(1) Such agricultural seed contains any one or all of the noxious weed seeds named in this section, subdivision 1 (c), in excess of 25 such weed seeds per pound or such agricultural seed contains ten or more seeds of leafy spurge (*euphorbia esula*), perennial pepper grass (*lepidium draba*), horse nettle (*solanum carolinense*), or australian field cress (*roripa* or *radicula austriaca*).

(2) Such agricultural seed contains two or more per cent by weight of all other weed seeds.

(3) Such agricultural seed shall contain no seeds of creeping jennie (*convolvulus arvensis* L.).

(4) It shall be unlawful for any person to sell to the consumer, offer or expose for sale any screenings of any name or nature that have not been devitalized by grinding sufficiently fine to destroy all weed seeds, or otherwise devitalize them.

Subd. 3. Commissioner to fix percentage of weed seed allowable.—The commissioner may fix the weed seed content allowable in the case of any agricultural seeds, when in his judgment the character of such seeds preclude the removal of certain weed seeds to a two per cent basis as herein defined. (As amended Apr. 5, 1929, c. 137; Apr. 20, 1939, c. 307, §2.)

Where tag of label attached to a bag or package of seed states kind of seed and that it is 98% pure, such statement is a warranty of purity of seed as so stated. *Mallery v. N.*, 196M129, 264NW573. See Dun. Dig. 8546.

Evidence does not justify holding, as a matter of law, that plaintiff was prevented or estopped from recovering damages for breach of warranty of seed purchased, on ground that he failed to inspect seed before sowing same. *Id.*, See Dun. Dig. 8566.

The prohibition of subd. (g) applies to farmer sowing or selling his own seed. *Op. Atty. Gen.*, Apr. 2, 1930.

3957-21. Subdivision 1. Hybrid seed corn—What constitutes.—In this act unless otherwise specified, "hybrid seed corn" shall be seed of the first generation of a cross involving two, three, or four different inbred lines of corn or their combinations, and shall be restricted to seed of single crosses, three-way crosses and double crosses, these in turn being defined as follow:

(1) Single cross. The first generation of a hybrid between two inbred lines.

(2) Three-way cross. The first generation of a hybrid between a single cross and an inbred line.

(3) Double cross. The first generation of a hybrid between two single crosses.

Subdivision 2. Definitions.—The word "person" as used herein shall be construed to import both the singular and the plural as the case requires and shall include corporations, a copartnerships, companies, societies, firms and associations. (Act Mar. 31, c. 106, §1.)

3957-22. Sale of Hybrid seed corn.—It shall be unlawful for any person to sell, offer or expose for sale within the state of Minnesota any seed corn as "hybrid" unless the said seed answers to and complies with the definition of hybrid seed corn contained in Section 1 hereof; and unless there is attached to each sack, bag, or other container of such corn a label

specifying that the corn contained therein is the product of either a single cross, a three-way cross or a double cross, as the case may be; and said label shall state the year, county and state in which said hybrid corn was raised and state approximately the number of days of growing season required from emergence of the corn plant above the ground to maturity in the section in Minnesota where said corn is intended to be grown, as hereinafter provided. (Act Mar. 31, 1939, c. 106, §2.)

3957-23. Dean of agricultural college to establish sections.—It shall be the duty of the dean and director of the department of agriculture of the University of Minnesota to determine, establish and number or otherwise identify, corn growing sections of the state and to determine and publish for each section so established the approximate number of days growing season required for corn from emergence of the corn plants above ground after planting to maturity. (Act Mar. 31, 1939, c. 106, §3.)

3957-24. Commissioner of agriculture to enforce act.—The commissioner of agriculture is hereby charged with the duty and responsibility of enforcing the provisions of this act. (Act Mar. 31, 1939, c. 106, §4.)

3957-25. Violations—Penalties.—Any person violating any of the provisions of this act shall be guilty of a misdemeanor. (Act Mar. 31, 1939, c. 106, §5.)

3957-26. Effective July 1, 1939.—This act shall take effect and be in force from and after the first day of July, 1939. (Act Mar. 31, 1939, c. 106, §6.)

SOFT DRINKS AND OTHER NON-ALCOHOLIC BEVERAGES

3965-1. Licenses required for manufactures of.

Restaurants, hotels or other places where they are mixing soft drinks, quart or more, are required to have manufacturer's licenses. *Op. Atty. Gen.*, Aug. 7, 1931.

3965-3. Definitions of soft drinks.—Wherever used in this Act, the terms "Soft drinks and other non-alcoholic beverages" shall mean and include (a) carbonated or still beverages, (b) beverages containing milk fat, (c) natural and mineral waters, carbonated, plain or otherwise, but shall not include apple or fruit ciders, or natural fruit juices, or cereal beverages. (As amended Apr. 22, 1937, c. 359, §1.)

Whether a mineral water to which several alkaline salts have been added, which may be used in connection with certain skin diseases and for hangovers and the like is a soft drink subject to licensing and registration is a question of fact. *Op. Atty. Gen.* (634b), June 25, 1935.

Milk and cream are not beverages as such. *Op. Atty. Gen.* (631f-3), May 26, 1937.

3965-4. Applications for license—Fee—Issue of license.

It is permissible for a manufacturer or distributor to have branches for distributing its products, but branch addresses should not be contained on the label in such manner as to indicate that license was issued for such addresses. *Op. Atty. Gen.* (634c), May 15, 1935.

3965-9. Carbonated beverages defined.—A carbonated or still beverage within the meaning of this Act, shall be a beverage made of pure cane, beet sugar, and/or refined corn sugar, with pure water, and pure flavoring materials, with or without fruit acids and harmless coloring materials, and the finished product shall contain not less than seven per centum of sugar and less than $\frac{1}{2}$ of one per centum of alcohol by volume. All carbonated or still beverages not conforming to the above requirements, this Act, the Minnesota Dairy and Food Law, or the rules, regulations, definitions and standards made thereunder, shall be deemed to be adulterated. (27, c. 42, §9; Apr. 21, 1933, c. 378.)

3965-16. Definitions—barley content of malt.—"Fermented Malt-Beverages" shall mean any liquor or liquid capable of being used for beverage purposes, made by the alcoholic fermentation of an infusion in

potable water of barley malt and hops, with or without unmalted grains or decorticated and degerminated grains or sugar, containing one-half of one per centum or more of alcohol by volume. No fermented malt beverages shall be sold in this state after July 1st, 1937, unless sixty-six and two-thirds per cent (66- $\frac{2}{3}$ %) or more of the grain used in its manufacture consists of barley malt. (Mar. 8, 1937, c. 59, §1.)

3965-17. Department of Agriculture to enforce act.—The Department of Agriculture, Dairy and Food shall be charged with the enforcement of this Act, and is hereby authorized and directed to procure samples on the open market for chemical analysis. (Mar. 8, 1937, c. 59, §2.)

3965-18. Violations a misdemeanor.—Any violation of this act shall be a misdemeanor and punishable accordingly. (Mar. 8, 1937, c. 59, §3.)

3965-19. Licenses for sale of non-intoxicating malt liquor—Holder of federal license.—No license for the sale of non-intoxicating malt liquor, containing not more than 3.2% of alcohol by weight, shall be issued to any person who is also the owner and holder of, or to whom there is hereafter issued, a Federal retail liquor dealer's special tax stamp for the sale of intoxicating liquor at any place unless there has also been issued to such person a license to sell intoxicat-

ing liquor pursuant to the laws of this state at such place; and the non-intoxicating malt liquor license of any person who is also the owner and holder of, or to whom there is hereafter issued, such Federal retail liquor dealer's special tax stamp, and who does not have a license to sell intoxicating liquors pursuant to the laws of this state for such place, shall be forthwith revoked by the governing body issuing the same, without notice and without a hearing on such revocation. (Act Apr. 4, 1939, c. 138, §1.)

3.2 per cent beer licenses may be summarily revoked without formal notice or hearing, where licensees have federal retail liquor dealers' special tax stamp, and board would be justified in requiring definite proof to show that stamp has been invalidated for remainder of their duration. Op. Atty. Gen. (217B-10), May 1, 1939.

Physical destruction of a federal retail liquor dealers special tax stamp by owner thereof does not make him eligible to obtain a 3.2 per cent beer license. Op. Atty. Gen. (217B-10), May 2, 1939.

3965-20. Same—Licensee shall not display federal retail tax stamp—Violation a misdemeanor.—Any person who sells non-intoxicating malt liquor, containing not more than 3.2 per cent alcohol by weight, while holding or exhibiting in his place of business a Federal retail liquor dealer's special tax stamp, without having an intoxicating liquor license under the laws of Minnesota, shall be guilty of a misdemeanor. (Apr. 4, 1939, c. 138, §2.)

CHAPTER 21A

Regulation of Manufactures and Sales

3973 to 3976. [Repealed.]

Repealed by Laws 1929, c. 358, §12, post, §3976-12.

3976-1. Definitions.—That the term "bedding" as used in this act shall be construed to mean any mattress, upholstered spring, comforter, pad, cushion or pillow designed and made for use in sleeping or reclining purposes. The word "person" as used in this act shall be construed to impart the plural and the singular, as the case demands, and shall include, individuals, corporations, partnerships, joint-stock companies, or other business associations who are manufacturers or dealers in bedding. The word "new" as used in this act, shall mean any material or article that has not previously been used in the manufacture of bedding articles, or for any other purpose. The term "second hand" shall mean any material or article that has been previously used in the manufacture of bedding or for any other purpose. The word "shoddy" shall mean any material that has been spun into yarn, knit or woven into fabric, and subsequently cut up, torn up, broken up or ground up. (Act Apr. 24, 1929, c. 358, §1.)

The term "bedding," in view of the employment of the word "reclining" has reference to any article of furniture on which a person may sleep or recline, but it does not apply to a straight back chair and probably not to a rocking chair. Op. Atty. Gen., Apr. 2, 1930.

3976-2. May not use second-hand material in certain cases.—No person shall use in the making or remaking of any article of bedding as herein defined any material that has been used in any private or public hospital, or any material of any kind that has been used by or about any person having an infectious or contagious disease, or has formed a part of any article of bedding which has so been used. This section shall not prevent the renovating of bedding used in any private or public hospital. (Act Apr. 24, 1929, c. 358, §2.)

3976-3. Sale of bedding, etc., forbidden.—No person shall sell, offer for sale, consign for sale, or have in his possession with intent to sell, or consign for sale any bedding used in a private or public hospital or any article of bedding that has been used by or about

any person having an infectious or contagious disease. (Act Apr. 24, 1929, c. 358, §3.)

3976-4. Material must be renovated.—No person shall remake or renovate any article of bedding unless all the material to be used in said remake or renovated bedding shall first be thoroughly sterilized and disinfected by the methods set out herein, or by any other approved sterilization method:

(a) Dry heat of a temperature of not less than 160 degrees centigrade temperature for not less than one hour. A thermometer for registering the temperature visible from the outside of the room shall be provided where dry heat is used.

(b) Live steam, with subsequent drying of the material over steam coils with a pressure of not less than 20 pounds of steam for 20 minutes. A gauge for registering steam pressure visible from the outside of the room shall be provided where steam under pressure is used and valved outlets shall be provided near the bottom and also the top of the room in cases where streaming steam is used.

(c) Formaldehyde and sulphur concurrently in a moist atmosphere for a period of not less than 10 hours. Formaldehyde gas shall be generated from the use of one pint of formaldehyde solution, 37% to each 1,000 cubic feet of air space, or through the use of any of the high class commercial fumigators which generate an equivalent quantity of gas. Sulphur shall be from the burning of three pounds of sulphur for each 1,000 cubic feet of air space. The moist atmosphere shall be produced by thorough sprinkling of the floor of the room with warm water just prior to the process of disinfection. The room shall be provided with a separate air inlet and also an exhaust connection, and shall be equipped with tight dampers or closure gates which can be operated from the outside of the room. Rooms for disinfection of bedding materials shall be made gas or steam tight. Shelving for loose bedding materials shall be of lattice or other open construction.

Solid shelves of a type to prevent passage of gas through the materials shall not be permitted. (Act Apr. 24, 1929, c. 358, §4.)

3976-5. Devices must be approved.—All devices and equipment before being used as a process for sterilization and disinfection, shall be approved by the Industrial Commission of Minnesota, upon written application of the person desiring to use the same, and when so approved, a numbered permit for such use shall be issued to the applicant by the Industrial Commission of Minnesota. Such permit shall expire one year from date thereof. Such system of sterilization and disinfection shall be kept in good condition and repair. Every person to whom a permit has been issued shall keep such permit conspicuously posted under glass near such sterilization or disinfection chamber. Refusal to display such permit in accordance with this act shall be sufficient reason to revoke the same. Nothing in this act shall prevent any person engaged in the making or remaking, renovating or sale of any article herein described which requires sterilizing and disinfecting under the provisions hereof, from having such sterilizing and disinfecting performed by any person to whom a permit for such purposes has been issued, providing the number of the permit, with date of sterilization shall be printed on the tag or label attached to the article, and a copy of such kept by person doing such sterilization for reference. (Act Apr. 24, 1929, c. 358, §5.)

3976-6. Subject to inspection.—All places where bedding is made, remade, or renovated, or where materials for bedding are prepared, or establishment where said articles are offered for sale, or are in possession of any person with intent to sell, deliver, lease, or to consign them to an establishment where sterilizing and disinfecting is performed, shall be subject to inspection by duly appointed inspector for the Industrial Commission of Minnesota to ascertain whether the materials used or sold or the finished article enumerated, conform to the requirements of this act. Inspector shall have authority to open such bedding to examine the material used in filling. (Act Apr. 24, 1929, c. 358, §6.)

3976-7. Sales forbidden—Exceptions.—No person shall sell, lease, offer to sell or lease, or deliver or consign for sale or lease, or have in his possession with intent to sell, lease, deliver or consign for sale or lease, any bedding made, remade, or renovated in violation of this act; or any second-hand bedding unless since last used it has been thoroughly sterilized and disinfected by an approved method of sterilization. (Act Apr. 24, 1929, c. 358, §7.)

3976-8. Same.—No person, firm or corporation, by himself or his agents, servants or employees, shall make or sell, or offer to sell, deliver or consign for sale, or have in his or their possession with intent to sell, deliver or consign for sale any bedding made of material that has theretofore been used as a container for or in contact with any animal or vegetable matter or any material hereinbefore designated as shoddy, unless the bedding shall be labeled as such, or any material that has theretofore been used unless the same shall have been cleaned and sterilized. (Act Apr. 24, 1929, c. 358, §8.)

3976-9. Must be labeled.—No person shall make or remake, or sell, offer for sale, consign for sale, or have in his possession with intent to sell, offer for sale, or consign for sale any article of bedding as herein defined unless the same is labeled as follows:

Upon each of such articles of bedding there shall be securely sewed upon the outside thereof a muslin or linen label not less than three by four and one-half inches in size, upon which shall be in plain print, in the English language, a description of the material used as filling of such article of bedding; and if such material or any portion thereof shall not have been previously used, the words "manufactured of new material" shall appear upon said label, together with the name and address of the maker or vendor there-

of. If any of the material used in the making or remaking of such article of bedding shall have been previously used, the words "manufactured of second hand material" or "remade of second hand material" as the case may be, shall appear upon said label, together with the name and address of the maker or vendor thereof, and also a description of the material used in the filling of such article of bedding. On any article of bedding, not remade, but which has been previously used, the words "second hand materials used in filling not known" shall appear upon said label, together with the name and address of the vendor thereof. The statement required under this section shall be in form as follows:

OFFICIAL STATEMENT

Materials used in filling.....
Made by
Vendor
Address

This article is made in compliance with an act of the State of Minnesota approved the.....day of.... 1929.

The statement of compliance required in the foregoing "official statement" shall not be construed to imply that it is prohibited to state also that the article of bedding is made in compliance with act or acts of other states.

The words "manufactured of new material" or "manufactured of second hand material" or any article of bedding not remade, "second hand materials used in filling not known" together with the description of the material used as filling of an article of bedding shall be in letters not less than one-eighth ($\frac{1}{8}$) of an inch in height. Statement of filling shall conform to rules regulating the manufacture and sale of bedding as approved by the Industrial Commission of Minnesota. No term of description likely to mislead shall be used on any label required by this regulation, in the description of the material used in the filling of any article of bedding. The label shall be attached to each mattress, pad or upholstered spring by sewing all four edges of label.

Any person who shall remove, deface, alter or shall cause to be removed, defaced or altered any label or tag upon any article of bedding so labeled or tagged under the provisions of this act, shall be guilty of a violation thereof. (Act Apr. 24, 1929, c. 358, §9.)

A person running a second-hand store who removes tag bought from emergency relief administration violates this section. Op. Atty. Gen. (2701), June 17, 1935.

A firm could not purchase material for mattresses, springs, cotton ticking, etc., and then have a bedding manufacturer make mattresses at a stipulated price, and then simply label the mattresses as being manufactured for the firm, without naming the manufacturer, or vendor. Op. Atty. Gen. (2701), Oct. 14, 1938.

3976-10. Feathers to be renovated.—Feathers used in making, remaking, or renovating, new or second hand bedding shall be thoroughly cured, sterilized, or disinfected. (Act Apr. 24, 1929, c. 358, §10.)

3976-11. Violation a misdemeanor.—Any person violating any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than \$100.00 nor less than \$25.00 or by imprisonment for not more than 90 days, nor less than 30 days, or by both such fine and imprisonment for each offense. (Act Apr. 24, 1929, c. 358, §11.)

3976-12. Law repealed.—Chapter 490, General Laws 1913 [§§3973 to 3976], and all acts or parts of acts inconsistent herewith hereby are repealed. (Act Apr. 24, 1929, c. 358, §12.)

3976-13. [Mason's 1934 Supp.] [Repealed.]
Repealed by Act Apr. 24, 1935, c. 268, §5, effective Sept. 1, 1935, post, §§3976-35, 3976-36.

3976-14. Sale of fireworks forbidden—Exceptions.—No person, firm, copartnership or corporation shall sell, offer for sale, or have in possession for the purpose of sale any fireworks within the limits of any town, any part of which is within fifteen miles of the corporate limits of any city of the first class, without first having obtained a license to sell fireworks from the town board of such town. (Act Apr. 23, 1929, c. 300, §1.)

Town board cannot act arbitrarily or unreasonably in granting or refusing licenses. Op. Atty. Gen., June 7, 1929.

Relates only to towns and not villages or other incorporated municipalities. Op. Atty. Gen., June 26, 1929.

3976-15. Town Board may grant licenses.—The town board of any town described in Section 1 is authorized to license any person, firm, co-partnership or corporation in such town and to impose a license fee therefor of not less than \$10.00 nor more than \$25.00, which shall be uniform in any such town during any calendar year. (Act Apr. 23, 1929, c. 300, §2.)

3976-16. Application—Fee.—Any person, firm, co-partnership or corporation desiring such license shall make application therefor to the town clerk, which application shall be in writing and shall contain a description of the premises where applicant proposes to sell such fireworks. Such application shall be accompanied by the license fee which shall be returned in case the board fails to grant such license. Such license permit shall be in writing, signed by the chairman of such board and attested by the clerk, and shall be limited to the premises named in the application and publicly displayed on such premises, and shall be for a period of one year from the date thereof. A town clerk shall submit any such application to the town board within ten days after he receives it. (Act Apr. 23, 1929, c. 300, §3.)

3976-17. Violation is a misdemeanor.—Any person, firm, co-partnership or corporation violating any of the provisions of this act shall be guilty of a misdemeanor. (Act Apr. 23, 1929, c. 300, §4.)

3976-21. Prison made goods to be subject to laws of state.—That all goods, wares and merchandise manufactured, produced, or mined, wholly or in part by convicts or prisoners (except convicts or prisoners on parole or probation), or in any penal and/or reformatory institutions transported into the State of Minnesota, and remaining therein for use, consumption, sale, or storage, shall upon arrival and delivery in the State of Minnesota, be subject to the operation and effect of the laws of the State of Minnesota, to the same extent and in the same manner as though such goods, wares, and merchandise had been manufactured, produced, or mined in the State of Minnesota, and shall not be exempt therefrom by reason of being introduced in the original package or otherwise. (Act Apr. 24, 1935, c. 267, §1.)

3976-22. Effective September 1, 1935.—This act shall take effect and be in force from and after September 1, 1935. (Act Apr. 24, 1935, c. 267, §2.)

3976-31. Prison made goods must be marked.—That all goods, wares and merchandise manufactured, produced, or mined, wholly or in part, by convicts or prisoners (except convicts or prisoners on parole or probation), or in any penal and/or reformatory institutions in this or any other state shall be branded, labeled or marked as hereinafter provided before being exposed for sale, and shall not be so exposed or sold without such brand, label or mark thereon. (Act Apr. 24, 1935, c. 268, §1.)

3976-32. Must contain the words "Prison made."—The brand, label or mark required by the 1938 Supplement to Mason's Minnesota Statutes of 1927, Section 3976-31, shall contain at the head or top thereof the words "Prison Made" followed by the name of the

penal or reformatory institution in which it was manufactured, produced, or mined in plain English lettering of the style known as great primer roman capitals. Such brand or mark, if the article will permit, shall be placed upon it and when such branding or marking is impossible, a label shall be used and attached. Such brand, mark or label shall be placed or attached outside of and on a conspicuous part of the finished article so as to be plainly visible to the purchasing public and also shall be placed outside of its box, crate or covering. (Act Apr. 24, 1935, c. 268, §2; Mar. 8, 1939, c. 57.)

3976-33. Sale of unmarked goods forbidden.—That no person shall sell, offer for sale, or have in possession for the purpose of sale, goods, wares or merchandise described in Section 1 of this Act without the brand, label or mark required by this Act being placed thereon or attached thereto, or remove, conceal or deface such brand, label or mark. (Act Apr. 24, 1935, c. 268, §3.)

3976-34. Violation a misdemeanor.—Any person who violates any of the provisions of this Act shall be guilty of a misdemeanor. (Act Apr. 24, 1935, c. 268, §4.)

3976-35. Law repealed.—Chapter 138 of the Laws of Minnesota for 1929 is hereby repealed. (Act Apr. 24, 1935, c. 268, §5.)

3976-36. Effective September 1, 1935.—This Act shall take effect and be in force from and after September 1, 1935. (Act Apr. 24, 1935, c. 268, §6.)

UNFAIR TRADE PRACTICES

PART ONE

3976-37. Application of Act.—The following sections of this act, constituting Part One thereof shall apply only to the manufacture, production or distribution of any commodity, article, goods, wares or merchandise in general use or consumption. (Mar. 30, 1937, c. 116, Pt. 1, §1.)

Part 1 of the Minnesota Fair Trade Act held valid and enforceable though parts two and three are invalid. Great Atlantic & Pacific Tea Co. v. E., (DC-Minn), 23F Supp70.

Act is intended as an aid to a greater degree of economic security and social order. Lichtenman v. L., 204M 75, 282NW689. See Dun. Dig. 8434, 9953.

Wholesaler as defined in Part 2 of this act also comes within provisions of Part 1 as a distributor. Op. Atty. Gen. (681h), May 21, 1937.

Constitutionality of Fair Trade Act in proposed H. F. No. 664, introduced in 1939 legislature, discussed and suggestions made. Op. Atty. Gen. (86a), March 8, 1939.

3976-38. Discrimination unlawful.—Any person, partnership, firm or corporation, foreign or domestic, doing business in the State of Minnesota, and engaged in the production, manufacture, distribution of any printed or mimeograph matter, commodity, article, goods, wares or merchandise in general use or consumption, that intentionally, for the purpose of destroying the competition of any regular established dealer in such commodity, article, goods, wares or merchandise, or to prevent the competition of any person, firm or corporation who or which, in good faith, intends and attempts to become such dealer, shall discriminate between different sections, communities or cities of this state by selling or furnishing such commodity, article, goods, wares or merchandise at a lower price or rate in one section, community or city or any portion thereof, than such person, firm or corporation, foreign or domestic, charges for such commodity, article, goods, wares or merchandise in another section, community or city, or any portion thereof, after making allowance for difference, if any, in the grade, quality or quantity after equalizing the distance from the point of production, manufacture or distribution and freight rates therefrom, shall be guilty of unfair discrimination, provided that this act shall not prevent any person, firm or corporation from in good faith, meeting local competition within any

one section, community, village or city. The inhibition hereof against locality discrimination shall embrace any scheme of special rebates, collateral contracts or any device of any nature whereby such discrimination is, in substance or fact, effected in violation of the spirit and intent of this act, together with all amendments thereof. (Mar. 30, 1937, c. 116, Pt. 1, §2.)

It is possible that a prima facie case of a violation would be established by showing that a sale was made at less than 10% above current delivered invoice price without reference to cash discount allowed on invoice, and thus require person complained against to rebut case by showing that he had taken advantage of cash discount. Op. Atty. Gen. (681h), May 21, 1937.

3976-39. Law repealed.—Chapter 413 of the Laws of 1921, being Sections 10464-7, inclusive, of Mason's Minnesota Statutes, 1927, are hereby repealed. (Mar. 30, 1937, c. 116, Pt. 1, §3.)

PART TWO

3976-40. Application of Act.—The following sections of this act constituting Part Two thereof shall apply only to the selling, offering or advertising for sale, giving away or offering or advertising the intent to give away of any commodity, article, goods, wares or merchandise, in wholesale or retail trade. (Mar. 30, 1937, c. 116, Pt. 2, §1.)

Part 2 of this act (§§3976-40 to 3976-45), held invalid in its entirety because of unconstitutionality of the provisions thereof essential to its enforcement. *Great Atlantic & Pacific Tea Co. v. E.*, (DC-Minn), 23FSupp70.

Wholesaler as defined in Part 2 of this act also comes within provisions of Part 1 as a distributor. Op. Atty. Gen. (681h), May 21, 1937.

3976-41. Certain acts to be unfair discrimination.—Any retailer or wholesaler, engaged in business within this state, which sells, offers for sale or advertises for sale, any commodity, article, goods, wares or merchandise, at less than the cost thereof to such vendor, or gives, offers to give or advertises the intent to give away any commodity, article, goods, wares or merchandise, for the purpose or with the effect of injuring competitors and destroying competition, shall be guilty of unfair discrimination, and upon conviction shall be subject to the penalty therefor provided herein.

Any retailer or wholesaler who sells goods in any part of the state of Minnesota at prices lower than those exacted by said person elsewhere in the state of Minnesota for like qualities and grades and where the effect of such lower prices may be substantially to lessen competition or tend to create a monopoly in any line of business, or to injure, destroy or prevent competition with the person selling at such lower prices, shall be guilty of unfair competition and subject to the penalties of this act; provided that nothing shall prevent differentials in prices in different localities which make only due allowances for differences in "cost of doing business" or "overhead expense" and in costs of delivery for such goods to different localities; nor differences in price made in good faith to meet local competition or any other person in such locality.

The inhibition against sales below cost or locality discrimination shall embrace any scheme of special rebates, collateral contracts, or any device of any nature whereby such discrimination is, in substance or fact, effected in violation of the spirit and intent of this act, together with all amendments thereto." (Act Mar. 30, 1937, c. 116, Pt. 2, §2; Apr. 22, 1939, c. 403, §1.)

Editorial note.—The title of Act Apr. 22, 1939, cited, does not include §3976-46 in the enumeration of sections amended. It also purports to repeal Laws 1937, chapters 116 and 456, but the body of the act does not respond to that declared intent, except inferentially in section 6, set out below as §3976-48. This may invalidate the entire act.

Preamble of Act Apr. 22, 1939, c. 403, cited above, recites:

Whereas, the practice of selling certain items of merchandise below cost in order to attract patronage is generally a form of deceptive advertising and an unfair method of competition in commerce; and

Whereas, such practice causes commercial dislocations, misleads the consumer, works back to the prejudice of and against the farmer, directly burdens and obstructs commerce, and diverts business from dealers who maintain a fair price policy; and

Whereas, bankruptcies among merchants who fail because of the competition of those who use such methods result in unemployment, disruption of leases, and non-payment of taxes and loans, and contribute to an inevitable train of undesirable consequences, including economic depression.

The second paragraph of this section held invalid as arbitrary and discriminating unfairly between merchants owning one store and merchants owning stores in more than one locality. *Great Atlantic & Pacific Tea Co. v. E.*, (DC-Minn), 23FSupp70.

Proof of intent to injure competitors or destroy competition is essential. Op. Atty. Gen. (681h), May 21, 1937.

Granting undue allowance on trade in merchandise constitutes violation if it results in cutting prices below minimum allowed. Id.

Giving of trading stamps is in effect giving of a discount but their use does not necessarily constitute violation. Id.

Giving away of a glass with each bottle of ginger ale would not be unlawful unless vendor received less than cost of ginger ale when adding thereto cost of glass and cost of doing business. Op. Atty. Gen. (681f-3), May 26, 1937.

Business man operating one cash and carry store and an ordinary credit store in same city may sell same article at different prices if effect of sales is not to injure competition or to create a monopoly. Op. Atty. Gen. (681g-3), Sept. 28, 1937.

Merchants plan to sell a \$5.00 trade card carrying a concealed number entitling owner to additional credits of from 20 cents to \$5.00 to be paid out in cash or trade might constitute a violation of this section, but there must be proof that result is to sell merchandise for less than 10% over cost. Op. Atty. Gen. (510c-4), August 14, 1939.

3976-42. Definitions.—The term "retailer" as used herein shall mean any person, partnership, firm, corporation or association, foreign or domestic, selling any commodity, article, goods, wares, or merchandise to the consumer and not for the purpose of resale in any form.

The term "wholesaler" as used herein shall mean any person, firm or corporation, partnership, association, business trust, or any unincorporated organization, selling or supplying any commodity, article, goods, wares, or merchandise to retailers, industrial buyers, restaurants, institutions or the selling on the part of one wholesaler to another wholesaler, creameries, canneries and other processors of agricultural products are defined to be manufacturers or producers and not included within the meaning of the term "wholesaler" as defined in this act.

The term "cost" as applied to the wholesaler or retail vendor shall mean:

1. The actual current delivered invoice or replacement cost whichever is lower plus the cost of doing business at said location by said vendor;

2. Where a manufacturer publishes a list price and discounts, in determining such "cost" said manufacturer's published list price and discounts then currently in effect plus the cost of doing business by said vendor shall be prima facie evidence of "cost".

The "cost of doing business" or "overhead expense" is defined as all current costs of doing business incurred in the conduct of such business and must include without limitation the following items of expense:

Labor, including salaries and bonuses of executives and officers, rent, depreciation, selling costs, maintenance of equipment, delivery costs, all types of licenses, taxes, insurance and advertising, and other fixed and incidental expenses.

The "cost of doing business," including without limitation the aforesaid items of expense, incurred in the conduct of such business during the calendar year or the 12 months immediately preceding any alleged violation of this act, or in the event that any retailer or wholesaler shall have been engaged in business within the State for a shorter period of time, then such cost for such period of time immediately preceding any alleged violation of this act shall be prima facie evidence of "cost" as herein defined.

Any sale made by the retail vendor at less than 10 per cent above the manufacturer's published list price, less his published discounts, where the manufacturer publishes a list price, or in the absence of such a list price, at less than 10 per cent above the actual current delivered invoice or replacement cost, for the purpose or with the effect of injuring competitors or destroying competition, shall be prima facie evidence of the violation of this act

Provided, however, that no prosecution shall be had or any action at law for damages or injunctive relief shall lie where the vendor sells at a price not less than 15 per cent above the manufacturer's published list price, less his published discounts, where the manufacturer publishes a list price or in the absence of such a list price, at not less than 15 per cent above the current delivered invoice or replacement cost.

Any sale made by a wholesale vendor at less than 2 per cent above the manufacturer's published list price, less his published discounts, where the manufacturer publishes a list price, or in the absence of such a list price, at less than 2 per cent above the actual current delivered invoice or replacement cost, for the purpose or with the effect of injuring competitors or destroying competition, shall be prima facie evidence of the violation of this act. (Mar. 30, 1937, c. 116, Pt. 2, §3; Apr. 26, 1937, c. 456, §1; Apr. 22, 1939, c. 403, §2.)

Explanatory note.—The title and enacting clause of Act Apr. 26, 1937, c. 456, purports to amend "Laws 1937, c. 116, section 3." The latter act is divided into three separate parts, and each part has its own series of numbered sections. The amendatory act does not designate the "part" in which the section sought to be amended appears. This may or may not be important, in view of the fact that the text of the section sought to be amended is set out in the amendatory act.

The third paragraph of this section held invalid as arbitrary and discriminatory in defining "cost" as something which may or may not be what merchant paid for his goods. *Great Atlantic & Pacific Tea Co. v. E.*, (DC-Minn), 23FSupp70.

The fourth paragraph of this section, in failing to give effect to merchant's current selling cost, held arbitrary, discriminatory, and not reasonably related to avowed purpose of the legislation. *Id.*

The sixth paragraph of this section held invalid because of the presumption of guilt raised thereby. *Id.*

Act applies to an intrastate transaction of a wholesaler who may also be engaged in interstate commerce subject to Robinson-Patman Act. *Op. Atty. Gen.* (681h), May 21, 1937.

It was not intention by use of language "not for resale in any form" to exclude from "retailers" persons who sell building materials to a contractor, made to sandwich maker, canvas to fabricator of awnings, etc. *Id.*

Cost of doing business may be determined by dividing total of various items by total purchase price cost of articles sold during preceding calendar year. *Id.*

A distributor of merchandise who performs function of both wholesaler and retailer should not be allowed to use wholesale published list price as a base for his retail price, and must recognize wholesale loss which actually exists and mark his goods accordingly in establishing both wholesale and retail basic cost price. *Id.*

Cost of doing business by department store relates to operation of business as a whole, and store cannot figure different cost for different departments, but act does not require that operator of department store sell same article at same price in all departments, if all such sales are above cost. *Id.*

There is no requirement that in figuring labor cost there must be included value to retailer of his own service and the service required rendered by members of his immediate family, who received no designated salary, but it is different if members of immediate family are paid a salary either directly or indirectly. *Id.*

Even where particular trade or industry in a certain locality has an established cost survey which shows that cost of doing business for such trade or industry in the locality is 18%, a person covered by such cost survey may nevertheless sell at 15% over his base price without being subject to penalty. *Id.*

Purchase of hardware by municipality at cost, plus 10%, would not be unlawful unless dealer's cost of doing business exceeded 10%, though a sale at less than 15% above cost is prima facie unlawful. *Op. Atty. Gen.* (681q-1), Aug. 20, 1937.

Usual and ordinary "cash discounts" are not to be taken into consideration in determining the base cost of given commodity and such discounts are not to be included in term "published discounts". *Op. Atty. Gen.* (681), Sept. 2, 1939.

3976-43. Bankrupt sales not to be considered in fixing costs.—In establishing the cost of a given article, goods, wares or merchandise to the vendor, the invoice cost of said article, goods, wares or merchandise purchased at a forced, bankrupt, closeout sale, or other sale outside of the ordinary channels of trade may not be used as a basis for justifying a price lower than one based upon the replacement cost as of date of said sale of said article, goods, wares or merchandise replaced through the ordinary channels of trade, unless said article, goods, wares or merchandise is kept separate from goods purchased in the ordinary channels of trade and unless said article, goods, wares or merchandise is advertised and sold as merchandise purchased at a forced, bankrupt, closeout sale, or by means other than through the ordinary channels of trade, and said advertising shall state the conditions under which said goods were so purchased, and the quantity of such merchandise to be sold or offered for sale. (Mar. 30, 1937, c. 116, Pt. 2, §4.)

3976-44. Cost surveys may be deemed competent evidence. [Repealed.]

Repealed Apr. 22, 1939, c. 403, §7.
Consisted of Act Mar. 30, 1937, c. 116, Pt. 2, §5.

Even where particular trade or industry in a certain locality has an established cost survey which shows that cost of doing business for such trade or industry in the locality is 18%, a person covered by such cost survey may nevertheless sell at 15% over his base price without being subject to penalty. *Op. Atty. Gen.* (681h), May 21, 1937.

It is not purpose of act to penalize efficient merchant, and if a merchant can prove that his cost of doing business is less than cost established by cost survey, he is not required to sell at the cost survey figure. *Id.*

Before a cost survey will be accepted by a court as prima facie evidence of cost of a particular dealer, it will be necessary to show that such survey is generally accepted as truly representing cost of doing business for such trade or industry in such locality or vicinity. *Id.*

Proof of intent to injure competitors or destroy competition is essential. *Id.*

3976-45. Exceptions.—The provisions of Sections 3976-41, 3976-42, and 3976-43 of the 1938 Supplement to Mason's Minnesota Statutes of 1927, of this act shall not apply to any sale made:

(a) In closing out in good faith the owner's stock or any part thereof for the purpose of discontinuing his trade in any such stock or commodity, and in case of the sale of seasonal goods or merchandise where style is the paramount feature or to the bona fide sale of perishable goods to prevent loss to the vendor by spoilage or depreciation, provided notice is given to the public thereof;

(b) When the goods are damaged or deteriorated in quality, and notice is given to the public thereof;

(c) By an officer acting under the orders of any court;

(d) In an endeavor made in good faith to meet the local prices of a competitor as herein defined selling the same commodity, articles, goods, wares or merchandise in the same locality or trade area. (Mar. 30, 1937, c. 116, Pt. 2, §6; Apr. 22, 1939, c. 403, §3.)

If person complained against has knowledge that price of particular item has been raised by competitor to proper level, he cannot justify his own sale below cost on ground that sales were made in good faith to meet competition. *Op. Atty. Gen.* (681h), May 21, 1937.

If dealer's legal price is \$2, and his competitor's legal price, owing to lower cost, is \$1.70, dealer can sell at \$1.85 and still claim he sold at less than his legal price to meet competition. *Id.*

Words "meet the local prices" will not be construed as permitting sales by a competitor at prices less than those he is endeavoring to meet. *Id.*

PART THREE

3976-46. Violations—Penalties.—Any person, firm or corporation, whether as principal, agent, officer, or director for himself, or itself, or for another person, firm or corporation, wilfully violating the provisions of Sections 3976-41, 3976-42, 3976-43 of the 1938 Supplement to Mason's Minnesota Statutes of 1927, shall, upon conviction thereof, be fined not less than

\$200.00, nor more than \$1,000 for each offense; or, in default of the payment of such fine, by imprisonment in the county jail for not less than three months nor more than one year.

Any person who either as director, officer or agent of any firm or corporation or as agent of any person violating the provisions of Sections 3976-41, 3976-42 and 3976-43 of the 1938 Supplement to Mason's Minnesota Statutes of 1927 knowingly assists or aids, directly or indirectly, in such violation shall be responsible therefor equally with the person, firm or corporation for whom or which he acts. (Act Mar. 30, 1937, c. 116, Pt. 3, §1; Apr. 22, 1939, c. 403, §4.)

Editorial note.—Act Apr. 22, 1939, c. 403, cited, does not, in its title, include this section in the enumeration of the sections to be amended.

The second and third paragraphs of this section when read together held invalid as declaring individual presumptively guilty of crime. *Great Atlantic & Pacific Tea Co. v. E.*, (DC-Minn), 23FSupp70.

Department of agriculture, dairy and food has no duty to perform in connection with enforcement of this act. Op. Atty. Gen. (681f-3), May 26, 1937.

3976-47. Remedies—Injunction at suit of persons injured—Damages—Remedy at law—Privilege of party as witness.—(a) In addition to the penalties provided in this act, the courts of this state are hereby vested with jurisdiction to prevent and restrain violations of this act. Any person, partnership, corporation or association damaged or who is threatened with loss or injury by reason of a violation of this act shall be entitled to sue for and have injunctive relief in any court of competent jurisdiction against any damage or threatened loss or injury by reason of a violation of this act and for the amount of the actual damages to him if any. In order to obtain such injunctive relief it shall not be necessary to allege or prove that an adequate remedy at law does not exist.

(b) A party to the record of any civil action or proceeding, instituted or brought in pursuance of the provisions of this act, may be required to testify under the provisions of Mason's Minnesota Statutes of 1927, Section 9816; provided, however, that no information so obtained may be used against the party as the basis for a criminal prosecution under the provisions of this act or any other criminal statute. (Mar. 30, 1937, c. 116, Pt. 3, §2; Apr. 22, 1939, c. 403, §5.)

3976-48. Remedies cumulative.—Nothing in this act shall be construed as repealing any act other than Laws 1921, Chapter 413, and such parts of Laws 1937, Chapter 116, as amended by Laws 1937, Chapter 456, as are inconsistent herewith, but the remedies herein provided shall be cumulative to all other remedies provided by law. (Act Mar. 30, 1937, c. 116, Pt. 3, §3; Apr. 22, 1939, c. 403, §6.)

3976-49. Provisions severable.—The provisions of this act are hereby declared to be severable. If one provision hereof shall be found by the decision of a court of competent jurisdiction to be invalid such decision shall not affect the validity of the other provisions of this act. (Mar. 30, 1937, c. 116, Pt. 3, §4.)

MINIMUM RESALE PRICES—FAIR TRADE ACT

3976-51. Definitions.—The following terms, as used in this Act, are hereby defined as follows:

(A) 'Commodity' means any subject of commerce.

(B) 'Producer' means any grower, baker, maker, manufacturer, bottler, packer, converter, processor or publisher.

(C) 'Wholesaler' means any person selling a commodity other than a producer or retailer.

(D) 'Retailer' means any person selling a commodity to consumers for use.

(E) 'Person' means an individual, a corporation, a partnership, an association, a joint-stock company, a business trust or any unincorporated organization. (Mar. 30, 1937, c. 117, §1.)

Constitutionality of Fair Trade Act in proposed H. F. No. 664, introduced in 1939 legislature, discussed and suggestions made. Op. Atty. Gen. (86a), March 8, 1939.

3976-52. Certain contracts not to be in violation of law.—No contract relating to the sale or resale of a commodity which bears, or the label or container of which bears, the trade-mark, brand, or name of the producer or distributor of such commodity and which commodity is in free and open competition with commodities of the same general class produced or distributed by others shall be deemed in violation of any law of the State of Minnesota by reason of any of the following provisions which may be contained in such contract:

(A) That the buyer will not resell such commodity at less than the minimum price stipulated by the seller.

(B) That the buyer will require of any dealer to whom he may resell such commodity an agreement that he will not, in turn, resell at less than the minimum price stipulated by the seller.

(C) That the seller will not sell such commodity:

(1) to any wholesaler, unless such wholesaler will agree not to resell the same to any retailer unless the retailer will in turn agree not to resell the same except to consumers for use and at not less than the stipulated minimum price, and such wholesaler will likewise agree not to resell the same to any other wholesaler unless such other wholesaler will make the same agreement with any wholesaler or retailer to whom he may resell; or

(2) to any retailer, unless the retailer will agree not to resell the same except to consumers for use and at not less than the stipulated minimum price. (Mar. 30, 1937, c. 117, §2.)

Act applies to "on sale" of Intoxicating Liquors. Op. Atty. Gen. (681-x), Nov. 4, 1937.

3976-53. What are violations.—For the purpose of preventing evasion of the resale price restrictions imposed in respect of any commodity by any contract entered into pursuant to the provisions of this Act (except to the extent authorized by the said contract):

(a) The offering or giving of any article of value in connection with the sale of such commodity;

(b) The offering or the making of any concession of any kind whatsoever (whether by the giving of coupons or otherwise) in connection with any such sale; or

(c) The sale or offering for sale of such commodity in combination with any other commodity, shall be deemed a violation of such resale price restriction, for which the remedies prescribed by Section 6 of this Act shall be available. (Mar. 30, 1937, c. 117, §3.)

Practice of retailer in giving away coupons when value of coupons results in a sale of articles below retail price stipulated in contract is a violation of this section. Op. Atty. Gen., (681f-3), July 11, 1938.

3976-54. Who may fix minimum prices.—No minimum resale price shall be established for any commodity, under any contract entered into pursuant to the provisions of this Act, by any person other than the owner of the trade-mark, brand or name used in connection with such commodity or a distributor specifically authorized to establish said price by the owner of such trade-mark, brand or name. (Mar. 30, 1937, c. 117, §4.)

3976-55. Application of Act.—No contract containing any of the provisions enumerated in Section 2 of this Act shall be deemed to preclude the resale of any commodity covered thereby without reference to such contract in the following cases:

(A) In closing out the owner's stock for the bona fide purpose of discontinuing dealing in any such commodity and plain notice of the fact is given to the public; provided the owner of such stock shall give to the producer or distributor of such commodity prompt and reasonable notice in writing of his intention to close out said stock, and an opportunity to purchase such stock at the original invoice price;

(B) When the goods are altered, second-hand, damaged, defaced or deteriorated and plain notice of the fact is given to the public in the advertisement and sale thereof, such notice to be conspicuously displayed in all advertisements and to be affixed to the commodity;

(C) By any officer acting under an order of court. (Mar. 30, 1937, c. 117, §5.)

3976-56. Unfair competition.—Wilfully and knowingly advertising, offering for sale or selling any commodity at less than the price stipulated in any contract entered into pursuant to the provisions of this Act, whether the person so advertising, offering for sale or selling is or is not a party to such contract, is unfair competition and is actionable at the suit of any person damaged thereby. (Mar. 30, 1937, c. 117, §6.)

3976-57. Application of Act.—This Act shall not apply to any contract or agreement between or among producers or distributors or, except as provided in Section 2, Subdivision (C) of this Act between or among wholesalers or between or among retailers as to sale or resale prices. (Mar. 30, 1937, c. 116, §7.)

3976-58. Provisions severable.—If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of the Act, and the application of such provisions to other persons or circumstances, shall not be affected thereby. (Mar. 30, 1937, c. 117, §8.)

3976-59. Inconsistent Acts repealed.—All Acts or parts of Acts inconsistent herewith are hereby repealed to the extent of such inconsistency. (Mar. 30, 1937, c. 117, §9.)

3976-60. To be known as "Fair Trade Act."—This Act may be known and cited as the "Fair Trade Act". (Mar. 30, 1937, c. 117, §10.)

Sec. 11 of Act Mar. 30, 1937, cited, provides that the Act shall take effect from its passage.

INDIAN MANUFACTURES

3976-61. Imitation Indian made goods to be branded.—That all goods, wares and merchandise known as moccasins, bead work, birch-bark baskets, deer skin work, grass rugs, sweet grass baskets and other goods which are manufactured or produced in imitation of genuine Minnesota Indian hand made goods, wares or merchandise shall be branded, labeled or marked, as hereinafter provided, before being exposed for sale and shall not be exposed or sold without such brand, label or mark thereon. (Apr. 12, 1937, c. 196, §1.)

3976-62. Brand.—The brand, label or mark required by Section 1, hereof, shall be the words "Imitation Indian Made" and shall be placed or attached outside of and on a conspicuous part of the finished article so as to be plainly visible to the purchasing public and shall be the size and style known as great primer roman capitals. Such brand or mark, if the article will permit, shall be placed upon it, but when such branding or marking is impossible a label shall be used and attached thereto. (Apr. 12, 1937, c. 196, §2.)

3976-63. Goods not to be sold without brand.—That no person shall sell, offer for sale, or have in possession for the purpose of sale, imitation goods, wares or merchandise described in Section 1, of this act without the brand, label or mark required by this act being placed thereon or attached thereto, or remove, conceal or deface such brand, label or mark. (Apr. 12, 1937, c. 196, §3.)

3976-64. Violation a misdemeanor.—Any person who violates the provisions of this Act shall be guilty of a misdemeanor. (Apr. 12, 1937, c. 196, §4.)

Sec. 5 of Act Apr. 12, 1937, cited, provides that the Act shall take effect from its passage.

AUTOMOBILE DEALERS ANTI COERCION ACT

3976-71. Manufacturers not to control financing of motor vehicles.—It shall be unlawful for any person who is engaged, either directly or indirectly, in the manufacture or wholesale distribution of motor vehicles to sell or enter into a contract to sell motor vehicles to any person who is engaged or intends to engage in the business of selling such motor vehicles at retail in this State, on the condition or with an agreement or understanding, either express or implied, that such person so engaged in selling motor vehicles at retail shall in any manner finance the purchase or sale of any one or number of motor vehicles only with or through a designated person or class of persons or shall sell and assign the conditional sales contracts, chattel mortgages or leases arising from the sale of motor vehicles or any one or number thereof only to a designated person or class of persons, when the effect of the condition, agreement or understanding so entered into may be to lessen or eliminate competition, or create or tend to create a monopoly in the person or class of persons who are designated, by virtue of such condition, agreement or understanding to finance the purchase or sale of motor vehicles or to purchase such conditional sales contracts, chattel mortgages or leases, and any such condition, agreement or understanding is hereby declared to be void and against the public policy of this State. (Apr. 24, 1937, c. 412, §1.)

Sale of used cars regulated. Laws 1939, c. 284. See §§2684-9 to 2684-13.

3976-72. Acts to be prima facie evidence.—Any threat, statement or promise, expressed or implied, made to any person engaged in the business of selling motor vehicles at retail in this State by any person engaged, either directly or indirectly, in the manufacture or distribution of motor vehicles, that such person will discontinue or cease to sell, or refuse to enter into a contract to sell, or will terminate a contract to sell motor vehicles, to such person who is so engaged in the business of selling motor vehicles at retail, unless such person finances the purchase or sale of any one or number of motor vehicles only with or through a designated person or class of persons or sells and assigns the conditional sales contracts, chattel mortgages, or leases arising from his retail sales of motor vehicles or any one or number thereof only to a designated person or class of persons shall be prima facie evidence of the fact that such person so engaged in the manufacture or distribution of motor vehicles has sold or intends to sell the same on the condition or with the agreement or understanding prohibited in Section 1 of this Act. (Apr. 24, 1937, c. 412, §2.)

3976-73. Same.—Any threat, statement or promise, expressed or implied, made to any person engaged in the business of selling motor vehicles at retail in this State by any person, or any agent of any such person, who is engaged in the business of financing the purchase or sale of motor vehicles or of buying conditional sales contracts, chattel mortgages or leases on motor vehicles in this State, and/or any person, or any agent of any such person, who is engaged in the business of financing the purchase or sale of motor vehicles or of buying conditional sales contracts, chattel mortgages or leases on motor vehicles in this State, and is affiliated with or controlled by any person engaged, directly or indirectly, in the manufacture or distribution of motor vehicles, that such person so engaged in such manufacture or distribution shall terminate his contract with or cease to sell motor vehicles to such person engaged in the sale of motor vehicles at retail in this State unless such person finances the purchase or sale of any one or number of motor vehicles only with or through a designated person or class of persons or sells and assigns the conditional sales contracts, chattel mortgages or leases arising from his retail sale of motor

vehicles or any one or any number thereof only to such person so engaged in financing the purchase or sale of motor vehicles or in buying conditional sales contracts, chattel mortgages or leases on motor vehicles, shall be presumed to be made at the direction of and with the authority of such person so engaged in such manufacture or distribution of motor vehicles, and shall be prima facie evidence of the fact that such person so engaged in the manufacture or distribution of motor vehicles has sold or intends to sell the same on the condition or with the agreement or understanding prohibited in Section 1 of this Act. (Apr. 24, 1937, c. 412, §3.)

3976-74. What are unlawful acts.—It shall be unlawful for any person who is engaged directly or indirectly in the manufacture or wholesale distribution of motor vehicles to pay or give or to contract to pay or give any thing of value or subsidy to any person, other than an automobile dealer or automobile distributor, who is engaged in the business of financing the purchase or sale of motor vehicles or of buying conditional sales contracts, chattel mortgages or leases on motor vehicles sold at retail within this State or to discriminate in favor of or against any person, other than an automobile dealer or automobile distributor, engaged in the business of financing the purchase or sale of motor vehicles or of buying conditional sales contracts, chattel mortgages or leases on motor vehicles sold at retail within this State, if the effect of such payment or contract to pay or give any thing of value or subsidy or discrimination may be to lessen or eliminate competition or to create or tend to create a monopoly in the person or class of persons who receive such thing of value or subsidy or who are benefited by such discrimination. (Apr. 24, 1937, c. 412, §4.)

3976-75. Same.—It shall be unlawful for any person, other than an automobile dealer or automobile distributor, who is engaged in the business of financing the purchase or sale of motor vehicles or of buying conditional sales contracts, chattel mortgages or leases on motor vehicles sold at retail within this State to accept or receive or contract or agree to accept or receive either directly or indirectly any thing of value or subsidy or the benefit resulting from any discrimination as set forth in Section 4 of this Act from any person engaged directly or indirectly in the manufacture or wholesale distribution of motor vehicles if the effect of the acceptance or receipt of any such thing of value or subsidy or benefit may be to lessen or eliminate competition or to create or tend to create a monopoly in the person or class of persons who receives such thing of value or subsidy or who are thus benefited by such discrimination. (Apr. 24, 1937, c. 412, §5.)

3976-76. Same.—It shall be unlawful for any person other than an automobile dealer or automobile distributor who hereinafter so accepts or receives either directly or indirectly any thing of value or subsidy or the benefit resulting from any discrimination as set forth in Section 5 of this Act or hereafter so contracts either directly or indirectly to receive any such thing of value or subsidy or benefit to thereafter finance or attempt to finance the purchase or sale of any motor vehicle or buy or attempt to buy any conditional sales contracts, chattel mortgages or leases on motor vehicles sold at retail in this State. (Apr. 24, 1937, c. 412, §6.)

3976-77. Attorney general to institute suit.—For a violation of any of the provisions of this Act by any corporation or association mentioned herein, it shall be the duty of the Attorney General or the District Attorney of the proper county, to institute proper suits or quo warranto proceedings in any court of competent jurisdiction for the forfeiture of its charter rights, franchises or privileges and powers exercised

by such corporation or association, and for the dissolution of the same under the general statutes of the State. (Apr. 24, 1937, c. 412, §7.)

3976-78. Foreign corporations may be prohibited from doing business in the state.—Every foreign corporation, as well as every foreign association, exercising any of the powers, franchises or functions of a corporation in this State, violating any of the provisions of this Act, is hereby denied the right and prohibited from doing any business in this State, and it shall be the duty of the Attorney General to enforce this provision by bringing proper proceedings by injunction or otherwise. The Secretary of State shall be authorized to revoke the license of any such corporation or association heretofore authorized by him to do business in this State. (Apr. 24, 1937, c. 412, §8.)

3976-79. Violation a misdemeanor.—Any person who shall violate any of the provisions of this Act, any person who is a party to any agreement or understanding, or to any contract prescribing any condition prohibited by this Act, any employee, agent or officer of any such person who shall participate, in any manner, in making, executing, enforcing, performing or in urging, aiding or abetting in the performance of any such contract, condition, agreement of understanding and any person who shall pay or give or contract to pay or give any thing or service of value prohibited by this Act, and any person who shall receive or accept or contract to receive or accept any thing or service of value prohibited by this Act, shall be deemed guilty of a gross misdemeanor and upon conviction thereof shall be punished by a fine not exceeding five hundred dollars (\$500.00) or be imprisoned in a county jail not exceeding six months, or by both such fine and imprisonment. Each day's violation of this provision shall constitute a separate offense. The words "person", "employee", "agent" or "officer" as used in this Section shall not be construed to mean or apply to any person who is engaged or intends to engage in the business of selling motor vehicles at retail in this State, nor the employee, agent or officer of any person who is engaged or intends to engage in the business of selling motor vehicles at retail in this State. (Apr. 24, 1937, c. 412, §9.)

3976-80. Contracts or agreements in violation of act void.—Any contract or agreement in violation of the provisions of this Act, shall be absolutely void and shall not be enforceable either in law or equity. (Apr. 24, 1937, c. 412, §10.)

3976-81. Provisions cumulative.—The provisions hereof shall be held cumulative of each other and of all other laws in any way affecting them now in force in this State. (Apr. 24, 1937, c. 412, §11.)

3976-82. May recover in civil action.—In addition to the criminal and civil penalties herein provided, any person who shall be injured in his business or property by any other person or corporation or association or partnership, by reason of anything forbidden or declared to be unlawful by this Act, may sue therefor in any court having jurisdiction thereof in the county where the defendant resides or is found, or any agent resides or is found, or where service may be obtained, without respect to the amount in controversy, and recover two-fold the damages by him sustained and the costs of suit. Whenever it shall appear to the court before which any proceedings under this Act may be pending, that the ends of justice require that other parties shall be brought before the court, the court may cause them to be made parties defendant and summoned, whether they reside in the county where such action is pending, or not. (Apr. 24, 1937, c. 412, §12.)

3976-83. Definitions.—(a) The term "person", as used in this Act, means any individual, firm, corporation, partnership, association, trustee, receiver or assignee for the benefit of creditors.

(b) The terms "sell", "sold", "buy", and "purchase", as used in this Act, include exchange, barter, gift, and offer of contract to sell or buy. (Apr. 24, 1937, c. 412, §13.)

3976-84. Automobile dealers' anti-coercion act.—This Act shall be known and shall be cited as "Automobile Dealers' Anti-coercion Act." (Apr. 24, 1937, c. 412, §14.)

3976-85. Provisions severable.—If any section, subsection, sentence, clause, or phrase of this Act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Act. The Legislature hereby declares that it would have passed this Act, and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more other sections, subsections, sentences, clauses or phrases be declared unconstitutional. (Apr. 24, 1937, c. 412, §15.)

Sec. 16 of Act Apr. 24, 1937, cited, provides that the Act shall take effect from its passage.

CHAPTER 21B

Regulation of Sale of Stocks, Bonds and Other Securities, Etc.

3977-3980. [Repealed, except as to pending proceedings.]

For purposes of limitation cause of action based on violation of §§3977 to 4000 accrued when the sale was made. *Burzinski v. K.*, 192M335, 256NW233. See Dun. Dig. 1125a, 5605.

Where mortgage note in which participation certificate was issued was secured by a real estate mortgage and was not for more than 70% of the fair value of property mortgaged, act did not apply. *Id.* See Dun. Dig. 1125a. Annotations under §3980.

Where a purchaser of stock from corporation which has not complied with the Blue Sky Law may recover the money paid, he cannot defend a suit brought by the receiver of the corporation to enforce the stockholders' liability, and it is immaterial that a certificate of stock has not been issued to him. 181M327, 232NW523. See Dun. Dig. 2061.

3982 to 3996. [Repealed, except as to pending proceedings.]

Annotations under §3985.

Where license is to sell stock for cash a note given for the price is invalid. *Simerman v. K.*, 179M246, 228NW 757.

Annotations under §3991.

2 (9).

A co-operative association which is authorized by its articles to sell stock to "any co-operative" is not exempt from provisions of securities' act relating to registration of stock. *Op. Atty. Gen.*, Dec. 8, 1933.

Annotations under §3994.

Where license is to sell stock for cash a note given for the price is invalid. *Simerman v. K.*, 179M246, 228NW 757.

3996-1. Definitions.—

(4) "Broker" shall mean and include every person who engages, or professes to engage, either for all or part of his time, directly or through an agent, in the business of accepting and executing buy and sell orders for securities of which he is not the issuer, or owner. (As amended Apr. 22, 1933, c. 408, §1.)

(6) "Agent" shall mean and include every person, other than a broker or dealer employed, appointed, or authorized, by an issuer, dealer or broker to sell securities. The term "agent" shall not include the partners of a partnership or officers of a corporation or association licensed as a broker, or dealer, or for whom securities are registered; provided that the term "officers" as used in this paragraph shall not include the directors of a corporation. (As amended Apr. 22, 1933, c. 408, §2.)

(9) "Dealer" shall mean and include every person who engages or professes to engage in selling directly or through an agent in the course of continued and successive sales any securities of which he is not the issuer for another, or who purchases and acquires for himself or another any securities of which he is not the issuer for the purpose of reselling the same to others, and of buying, selling or otherwise dealing or trading in (such) securities for him-

self or for another. (Added by Act Apr. 22, 1933, c. 408, §3.)

Act Apr. 22, 1933, c. 408, §1, amends the title of Laws 1927, c. 66, to read as follows: An Act to Protect Investors (as hereinafter defined) by Regulating Sales and Purchases and Attempted Sales and Purchases within the State of Minnesota, of Stocks, Bonds, Notes, Debentures, Commercial Paper, Evidences of Indebtedness, Investment Contracts, Interests in or under Profit Sharing or Participating Agreements or Schemes, and Interests in Trusts or Pretended Trusts; all hereinafter called Securities; by defining Words, Phrases, and Terms used in this Act; by fixing the Scope of the Regulation in this Act provided and prescribing the Conditions under which Securities may be sold, bartered, or exchanged or offered therefor; by providing for enforcement of this Act through Public Agencies and otherwise; by providing for Receivership of Assets of Persons selling Securities; by providing for the services of the Bureau of Criminal Apprehension in connection with Enforcement of this Act and prescribing its Duties in relation thereto; by providing for Advancement upon the Court Calendar of certain cases arising under this Act; by defining and prohibiting Schemes or Artifices to Defraud in connection with the Sale of Securities within the State of Minnesota; And by prescribing and imposing Penalties for Violation of or Non-compliance with this Act.

The title to Laws 1933, c. 408, is as follows: "An act to amend the title of Chapter 66, Laws of 1927, and Mason's Minnesota Statutes of 1927, section 3996-1, subdivisions (4) and (6), section 3996-2, as amended by Laws 1931, chapter 404, section 3996-3, subdivisions (5) and (7), section 3996-5, section 3996-6, section 3996-7, section 3996-9, section 3996-10, section 3996-11, section 3996-15, section 3996-17, and section 3996-19, relating to the regulation of sales and purchases, and attempted sales and purchases, within the State of Minnesota of stocks, bonds, notes and other securities and agreements."

Some of the parts of the act amended are not included in this enumeration.

Streissguth v. C., 198M17, 268NW638; note under §3996-11.

This act is constitutional, and it is not invalid on the ground that its subject is not expressed in its title. *Northwest Bancorporation v. B.* (USDC-Minn), 6FSupp 704; aff'd 292US606, 54SCR775, 54SCR720. See Dun. Dig. 8920.

The fundamental purpose of the Blue Sky Law is to prevent fraud. *Shepard v. C.* (DC-Minn), 24FSupp682.

Title of this act satisfies requirement of Const., Art. 4, §27, 171M191, 213NW904.

Chapter applies to sales of securities by the owner thereof as well as to sales by his representatives. 171 M191, 213NW904.

The act [§§3996-1 to 3996-28] is within the regulatory power of the legislature. 172M277, 215NW177.

Contract evidencing a sale of an interest in an invention was a "security," and not being registered, the sale was unlawful. 172M277, 215NW177.

Purpose of blue sky law is to prevent fraud in sale and disposition of securities within state. *Zochrisson v. R.*, 200M383, 274NW536. See Dun. Dig. 1125a.

A mere land contract or conveyance is not within law even though a number of parties join in venture by purchase of undivided interests and later form a corporation to hold the land, but if purchase of undivided interests in land is only incident to right to a beneficial interest in profits to be derived from an enterprise carried on upon whole tract, then sale of interest is investment within law. *Busch v. N.*, 202M290, 278NW34. See Dun. Dig. 1125a.

Where corporation amended its articles of incorporation so as to reduce par value of stock from \$100 per

share to \$10 per share, and issued to its stockholders certificates for 10 shares of new stock in place of each share of \$100 par value of old stock, this was not a sale of shares of new stock and did not come within law requiring registration of stock. *Mertz v. H.*, 294M636, 261NW472. See *Dun. Dig.* 1125a.

Grain marketing service which counsels subscribers as to trend of grain market is not a security and broker's license is unnecessary. *Op. Atty. Gen.*, Apr. 28, 1933.

Grain marketing service which does not execute, buy and sell orders, but trades through regular licensed brokers, does not need broker's license. *Id.*

Partnership in a stallion does not have to be registered as a security. *Op. Atty. Gen.*, July 11, 1933.

In view of Laws 1937, c. 145, §1, warehouse receipts for liquor are securities under this act. *Op. Atty. Gen.* (2183-18), Apr. 26, 1937.

Where country club desiring to purchase leased land for a golf course incorporated and sold stock solely to members of club, registration was unnecessary. *Op. Atty. Gen.* (616b-4), July 20, 1938.

(2). Where broker licensed to do business in Minnesota solicited prospective buyers in Minnesota and delivered the securities in Minnesota, after confirmation of sale by its Chicago office, the sales were Minnesota contracts to which Minnesota law applied. *Stern v. N.*, (DC-Minn), 25FSupp948.

Plan whereby maturity date of both principal and interest of a mortgage indebtedness is extended and reduction in rate of interest effected and conveyance of easement as additional security held to amount to sale of any security by way of an exchange. *Op. Atty. Gen.*, Oct. 16, 1933.

Transaction whereby bondholder deposits bonds with a bondholders' protective committee, pursuant to which bondholder sells all interest so that committee may in its discretion return bond or pro rata share of any security or property received in exchange, is a sale by way of exchange. *Op. Atty. Gen.*, Nov. 9, 1933.

Transfer of stock of a corporation for stock of another corporation organized to take over stock of former corporation and issue its stock in payment therefor, constitutes a sale requiring registration. *Op. Atty. Gen.* (616b), Dec. 2, 1938.

(3). Capital stock of national city bank of New York sold together with a proportionate beneficial interest in the capital stock of another New York corporation was subject to registration. *Shepard v. C.*, (DC-Minn), 24FSupp 682.

Contracts for sale of portions of land to be used as a vineyard, with agreement of seller to cultivate and divide net proceeds are "contracts for investments in a profit sharing scheme." 171M191, 213NW904.

The provision excluding from the act isolated sales not made in the course of repeated and successive sales is not void for indefiniteness. 172M277, 215NW177.

An instrument evidencing a contribution to assist in bringing to completion a metallurgical discovery, held a "security," though it may lack the degree of definition and certainty to make it a contract. 178M492, 227NW 652.

Fur farm contracts relating to profit sharing in raising muskrats held "securities." *State v. Robbins*, 185M 202, 240NW456. See *Dun. Dig.* 1125a(81).

Sale of undivided interest in property and lease back for three years with rent payable in merchandise is not a security. *Op. Atty. Gen.*, Mar. 14, 1929.

Ranching contract and bill of sale of certain number of marked ewes and forty per cent of increase to be delivered to purchaser at end of contract, was not a security. *Op. Atty. Gen.*, May 9, 1929.

Subscription agreement for membership in co-operative association engaging in business of distributing petroleum and products, held an "investment contract" and also a "profit sharing or participating agreement scheme" and therefore a security which must be registered. *Op. Atty. Gen.*, Jan. 23, 1933.

Warehouse receipt is not a security. *Op. Atty. Gen.*, Mar. 16, 1934.

"Contract for trading service" held to constitute an "investment contract." *Op. Atty. Gen.* (616a-5), Jan. 6, 1936.

Trust certificate covering a mortgage issued by federal housing administration and partially guaranteed by government, is a security and not exempt from registration. *Op. Atty. Gen.* (92b-13), Aug. 7, 1936.

Right of optional purchase of stock in endowment policy does not offend §3766, but does have effect of making policy a "security" within §3996-1(3) and writing of insurance a "sale" within §3996-4, requiring registration and license from commerce commission. *Op. Atty. Gen.* (249a-17), Mar. 19, 1937.

There is no fixed and rigid rule by which to determine whether that which is offered would be a "security" within the meaning of this act. *Op. Atty. Gen.* (616a-5), June 1, 1937.

Where company owning merchandise vending machines sells them to the public generally, and simultaneously or shortly thereafter purchaser enters into a lease with another company which locates stock, services and operates machines, giving purchaser 20% of deposits taken from machine as a rental, bill of sale and lease con-

stitutes a "security" or an "profit-sharing or participating agreement or scheme" which must be registered. *Op. Atty. Gen.* (616d-26), Sept. 27, 1937.

Agreement by licensed dealer for deposit of certain funds with stock exchange house in name of investor and appointing exclusive agent to trade account on margin basis upon payment of initial fee and a percentage of net profits constitutes an investment contract. *Op. Atty. Gen.* (616a-5), Apr. 26, 1938.

"Joint Fund Agreement", pursuant to which people are solicited generally and contribute 90% of capital and solicitor agrees to contribute 10% thereof, to be invested in securities and commodities for profit, must be registered. *Op. Atty. Gen.* (616d-15), Aug. 25, 1938.

A letter called an "investment counselor agreement," outside structure indicating relationship of principal and agent, but providing for a contingent fee payable at end of year on net profits, is a "security." *Op. Atty. Gen.* (616b), Jan. 19, 1939.

Interest in limited partnership held a "security." *Op. Atty. Gen.* (616B-10), May 26, 1939.

3996-2. Securities exempted from operation of certain provisions of law.—The provisions of Sections 4, 5, 6, and 7 of this Act [§§3996-2, 3996-3(5), 3996-3(7), 3996-5], with respect to the registration of securities, shall not apply to the following securities:

(1) Any security issued or guaranteed by the United States or by any state or territory or insular possession thereof, or by the District of Columbia, or by any political subdivision or agency of a state, territory, or insular possession, or by the Dominion of Canada or any province or any political subdivision thereof, having the power of taxation or assessment.

(2) Any security issued by and representing an interest in, or issued by and representing a direct obligation of, a state bank organized and operating under the laws of Minnesota; and any security issued by a national bank or by a corporation or governmental agency created or existing by an Act of the Congress of the United States other than corporations created or existing under the code of laws for the District of Columbia or under the code of laws for any territory or possession of the United States, provided that such corporation is subject to supervision or regulation by the Government of the United States.

(3) Any security issued or guaranteed either as to principal, interest or dividends, by a railroad which is subject to regulation or supervision either as to its rates and charges or as to the issue of its own securities by any regulatory board, body or official of the United States or of any state or territory or insular possession of the United States, or of the District of Columbia, and all securities senior thereto; also equipment notes, bonds or trust certificates, bases on chattel mortgages, leases, or agreements for conditional sale, of cars, motive power or other rolling stock mortgaged, leased or sold, to or furnished for the use of any railroad, and equipment notes, bonds or trust certificates where the ownership of title of such equipment is pledged or retained in accordance with the provisions of the laws of the United States or of any state, or of the Dominion of Canada, to secure the payment of such equipment notes, bonds or trust certificates; provided that such railroad is subject to regulation or supervision either as to its rates and charges or as to the issue of its own securities by a regulatory board, body or official having like powers, of the United States or of any state or territory or insular possession of the United States, or of the District of Columbia, and also any interest bearing securities issued by a public service utility which utility is subject to regulation or supervision either as to its rates and charges or as to the issue of its own securities by a public service commission, or any board, body, or official having like powers, of the United States or of any state or territory, which security would, at the time of sale, qualify for registration under section 3996-6, subsection 2a, Chapter 21 B, Mason's Minnesota Statutes of 1927.

(3a) Securities listed on the New York Stock Exchange, New York Curb Exchange and Chicago Stock Exchange, which securities have been so listed pur-

suant to official authorization by such exchange, and all securities senior to any securities so listed, subscription rights so listed, or evidences of indebtedness guaranteed by companies any stock of which is so listed, such securities to be exempt only so long as each listing shall remain in effect.

(4) Any interest bearing securities listed on the New York Stock Exchange or New York Curb Exchange, which securities have been so listed pursuant to official authorization by either of said exchanges and all interest bearing securities senior to any interest bearing securities so listed, providing said securities are issued by any person owning a property, business, or industry which has been in continuous operation not less than five years, and which has shown during a period of not less than 3 years next prior to the close of its last fiscal year preceding the offering of such securities, average annual net earnings, after deducting all prior charges, not including the charges upon securities to be retired out of the proceeds of sale, and assets (not including patents, copyrights, secret processes, formulas, goodwill, trade marks, trade brands, franchises, and other like intangible property), as of the date of the close of its last fiscal year preceding the offering of such securities together with the proceeds of the sale of such securities accruing to the issuer, of not less than one and one-half times the annual interest charge thereon and upon all other outstanding interest bearing obligations of equal rank, and assets at least equal to one hundred twenty-five percentum of the face value of such interest bearing securities, and all other obligations of equal or prior rank outstanding and not to be retired out of the proceeds of the sale of such securities.

(5) Commercial paper or negotiable promissory notes, maturing not more than within six months from the date of issue.

(6) Any security issued by a corporation organized exclusively for social, religious, educational, benevolent, fraternal, charitable or reformatory purposes and not for pecuniary gain, and no part of the net earnings of which inures to the benefit of any private stockholder or individual.

(7) Policy contracts of insurance companies licensed to do business in this state.

(8) Any security issued by a building and loan association organized under the laws of this state.

(9) Securities of any co-operative association organized in good faith under the laws of this state exclusively for the purpose of conducting upon the co-operative plan among its members, stockholders and patrons any or all of the following businesses: Any agricultural, dairy, livestock or produce business; the business of selling, marketing or otherwise handling, any agricultural, dairy, or livestock products, or other produce, raised or produced by the members, stockholders and patrons of such association, or by any co-operative association; the manufacture of anything from any agricultural, dairy or livestock products, or other produce, produced by the members, stockholders and patrons of such association; any business incidental to any of the above purposes; the operation of a rural telephone or rural electric distribution system among its stockholders. Except as last hereinabove provided otherwise, all co-operative associations organized or existing under Chapter 326, Session Laws of Minnesota for 1923, shall be deemed with the purview of this Act; and any provision to the contrary in said Chapter 326, Laws 1923, is hereby repealed.

(10) The commission may, by written order, temporarily suspend or wholly revoke the exempt status of any security exempted by this section. ('25, c. 192, §2; '27, c. 66, §3; Apr. 25, 1931, c. 404; Apr. 22, 1933, c. 408, §4; Apr. 15, 1939, c. 275.)

Act Apr. 26, 1937, c. 481, §1, purports in its title and enacting clause to amend this section, but the promised amendment is not set out in the act.

Act Apr. 26, 1937, c. 481, §1, provides: "Mason's Minnesota Statutes for 1927, section 3996-2, subsection 4, is hereby amended to read as follows:" following which there is a blank space. The secretary of state's office have inserted the catch words, "Law repealed," but this is obviously insufficient as a repeal.

Act Apr. 15, 1939, c. 275, cited, amends subdivision (9) only.

Power of commerce commission to lift exempt statutes of securities listed on exchanges, discussed. Op. Atty. Gen., Mar. 24, 1933.

Certificates issued in connection with ownership and operation by municipalities of their electric light and power plants are exempted from operation of law relating to registration of securities, though payment of such securities is to be out of a fund other than that derived from taxation. Op. Atty. Gen., Apr. 10, 1933.

(1). Securities issued by an agency or public service commission owned by state or its subdivisions need not be registered pursuant to §§3996-4 to 3996-7. Op. Atty. Gen. (616b-4), Dec. 15, 1937.

(3). Exemptions which attach to a national bank with respect to sale of securities are not available to a broker engaged in the sale of bank stock, but not itself engaged in the banking business. *Stern v. N.*, (DC-Minn), 25FSupp948.

(6). This subsection exempts from registration first mortgage coupon bonds issued by a social and religious corporation not organized for pecuniary gain and no part of whose earnings inure to the benefit of any of its members. Op. Atty. Gen., Apr. 10, 1933.

Dividends or distribution of property upon dissolution of social and religious corporation is neither "net earnings" nor "pecuniary gain." Op. Atty. Gen., Apr. 10, 1933.

(7). Securities of a co-operative association organized in good faith to manufacture beer, malt and malt products and other beverages from agricultural products produced by members and patrons need not be registered. Op. Atty. Gen., Feb. 5, 1934.

(9). All burial associations organized under plan similar to that of Sunset Burial Association should be required to make application for registration of membership certificates. Op. Atty. Gen., Feb. 18, 1933.

Securities of a co-operative association authorized by its articles to engage in a general merchandise business, to purchase and sell any agricultural product, to distribute farm and household supplies and to deal in such other commodities as are required to meet needs of the members of the association is not exempt from provision of act relating to registration of stock. Op. Atty. Gen. (616b-8), Aug. 10, 1934.

(10). This subdivision, authorizing suspension or revocation of license, is constitutional. *Northwest Bancorporation v. B.*, (USDC-Minn), 6FSupp704; aff'd 292US606, 54SCR 775, 54SCR720. See Dun. Dig. 1125a, 1646.

Voluntary consent to revocation of exempt status of stock pending investigation held not to divest commission of jurisdiction. Id.

3996-3. Sales excepted from operation of law.—

(5) Any subscription for securities, when no cash or other consideration is paid by, or agreed to be paid by, the purchaser prior to the registration of the securities; provided, that all such subscriptions are expressly conditioned upon the registration of such securities within one year from the date of such subscription and otherwise to be null and void. (As amended Apr. 22, 1933, c. 408, §5.)

(7) The sale to any bank, savings institution, trust company, insurance company or licensed broker or dealer. (As amended Apr. 22, 1933, c. 408, §6.)

Stock of corporation formed among stockholders of bank to turn real estate asset of bank into cash and to hold such real estate, held not required to be registered in order to enforce subscription. *Isanti Inv. Co. v. J.*, 189M331, 249NW670. See Dun. Dig. 1125a.

A sale of bonds to a trust company is exempt though purchased for its trust accounts. Op. Atty. Gen., Dec. 5, 1931.

Sales of stock to stockholders without a license is violation of law unless made pursuant to increase of authorized capital stock. Op. Atty. Gen., Feb. 28, 1933.

Person operating grain marketing service and undertaking for a consideration to counsel subscribers as to trend of grain market does not sell securities and need not obtain a broker's license. Op. Atty. Gen., Apr. 28, 1933.

A grain marketing service given blank powers of attorney by which subscriber authorizes it to trade in grain or stocks in consideration of 25% of net profits, subscriber to furnish money, and purchases to be made

through regular licensed brokers need not obtain broker's license. *Id.*

Broker or dealer selling securities to a bank, savings institutions, trust companies, insurance companies, licensed dealers and brokers, need not be licensed. *Op. Atty. Gen.* (616b-4), Dec. 3, 1934.

(1).

Statute exempts sales negotiated through a licensed broker by individual owners, none of which were shown to have been made in the course of repeated or successive sales by such owner, or by broker as representative of such owner. *Parr v. C.*, 196M325, 265NW287. See *Dun. Dig.* 1125a.

Mere maintenance, with nothing more, by corporation which originally issued stock, of registrar and transfer agents, through which certain questioned sales of stock were cleared, is not enough to charge corporation or its management with aiding and abetting sales. *Id.*

Sale of unregistered stock by Minnesota corporation to group of people and issuance of separate stock certificates to each member of the group, held not "isolated sales" thereof excepted from operation of the law. *Op. Atty. Gen.*, Apr. 7, 1933.

Isolated sales of securities may be made, notwithstanding orders of commerce commission temporarily suspending registration and exempt status of common capital stock. *Op. Atty. Gen.*, Nov. 27, 1933.

A broker member of stock exchange receiving a number of sell orders for execution but acting for different owner in each sale would not violate any order of commerce commission forbidding sale of securities, but a broker not a member of a stock exchange could not execute such orders through a member of exchange. *Op. Atty. Gen.*, Nov. 29, 1933.

(4).

Streissguth v. C., 198M17, 268NW638; note under §3996-11.

Where by amendment of its articles corporation increased amount of its authorized capital stock, and sold outright shares of increased stock to one of its stockholders, at par, there being no commission or brokerage expense in connection therewith, sale was exempted from registration. *Mertz v. H.*, 194M636, 261NW472. See *Dun. Dig.* 1125a.

Right of optional purchase of stock in endowment policy does not offend §3766, but does have effect of making policy a "security" within §3996-1(3), and writing of insurance a "sale" within §3996-4, requiring registration and license from commerce commission. *Op. Atty. Gen.* (249a-17), Mar. 19, 1937.

3996-4. Securities registered before sale—Application or notice.

In suit to recover purchase price of unregistered stock, plea of ratification, laches and estoppel held not sustained by record. *Shepard v. C.*, (DC-Minn), 24FSupp682.

In suit to recover purchase price of unregistered stock testimony to show that defendant had been advised by counsel that law of Minnesota did not require registration of the stock was incompetent and irrelevant. *Id.*

A sale of corporate stock which is not registered in accordance with statutes is illegal and consideration paid therefor can be recovered by purchaser. *Id.*

Six-year statute of limitations began to run against cause of action to recover purchase price of unregistered corporate stock upon discovery by the purchaser that the stock had not been registered. *Id.*

One engaged in the business of selling securities in Minnesota will be presumed to know of registration requirement. *Stern v. N.*, (DC-Minn), 25FSupp948.

Securities sold in Minnesota by nonresident broker, licensed under Minnesota Securities Law, required registration under Minnesota Blue Sky Law. *Id.*

The Securities Act is a valid exercise of the police power. *Stern v. N.*, (DC-Minn), 25FSupp949.

Sale of stock in violation of act is void. *Drees v. M.*, 189M608, 250NW563. See *Dun. Dig.* 1125a.

An officer of a corporation, aiding and participating in illegal sale of stock or securities of his corporation, is liable to purchaser for money paid therefor. *Id.* See *Dun. Dig.* 1125a.

Where president of corporation loaned money to defendants who purchased stock of corporation therewith and gave plaintiff note for money borrowed, fact that sale of stock was violation of Blue Sky Law furnished no defense to action on note. *Edson v. O.*, 190M444, 252NW217. See *Dun. Dig.* 1125a.

Transfer of stock of a corporation for stock of another corporation organized to take over stock of former corporation and issue its stock in payment therefor, constitutes a sale requiring registration. *Op. Atty. Gen.* (616b), Dec. 2, 1938.

If two corporations enter into an agreement to consolidate into a new corporation, stock of latter must be registered, and it would be immaterial that third corporation purchased assets of other corporation and paid therefor by issuance of its stock to the old corporation or their stockholders. *Id.*

3996-5. Registration by application.—Applications for registration of any securities subject to the provisions of this Act shall be made to the commission on forms prescribed by the commission, which appli-

cation shall be signed, and sworn to by the applicant and shall contain such information relative to the securities covered by such applications as the commission may deem necessary to enable it to determine whether such securities shall be registered.

The commission shall have power, in connection with pending applications for registration, to require the applicant to furnish in such form as it shall designate any additional information necessary to enable it to properly pass on the application before it; to order an appraisal, audit or such other expert technical examination and report as may seem necessary; and, where the applicant is the issuer of the securities, or is selling same for the issuer as broker or dealer, to make an investigation of the books, records, property, business and affairs of such issuer.

Upon compliance with all the provisions of this Act applicable to such application and the requirements of the commission, the commission shall either register such securities or deny the application. The commission shall have power to place such conditions, limitations and restrictions on any registration as may be necessary to carry out the purposes of this Act. Registration shall be by entry in a book called "Register of Securities," which entry shall show the securities registered and for whom registered, and the conditions, limitations and restrictions, if any, or shall make proper reference to a formal order of the commission on file showing such conditions, limitations and restrictions. A registration shall be made only for those on whose behalf application therefor was made, and shall authorize each of those for whom such registration was made to sell all or any portion of the securities so registered. A registration or registrations shall be good until exhausted by the sale of the securities so registered, or until suspended, cancelled or revoked, as hereinafter provided. The commission shall have power to deny an application for registration if the securities are fraudulent or if it appears to the commission that the sale thereof would work a fraud on purchasers thereof, or if the applicant has violated any of the provisions of this Act, or any registration or lawful order of the commission, or for good cause appearing to the commission. Denial shall be by written order. (25, c. 192, §5; Apr. 22, 1933, c. 408, §7.)

The Department of Commerce in considering evidence is not limited to jury trial rules of evidence. 174M200, 219NW81.

It was a subterfuge and an evasion of the statute for a company before its incorporation to sell notes of another corporation which could be exchanged for its stock. 174M200, 219NW81.

Order cancelling registration of securities of two corporations held improper and ineffective as to one of corporations, where it was granted upon application of only one of corporations without notice to other corporation. *State v. Dept. of Commerce*, 196M222, 264NW789. See *Dun. Dig.* 1125a.

3996-6. Registration by notification.—Whenever any securities required to be registered by the provisions of this Act fall within any of the following subsections of this section, any person entitled to have same registered may, in lieu of making application for registration as provided in Section 5 hereof, notify the commission of his intention to sell such securities, which notification shall be on forms prescribed by the commission, shall be signed and sworn to by the person giving the notice, and shall contain the following information:

- (a) Name of issuer.
- (b) Amount of issue and amount covered by the notification.
- (c) Statement that the securities fall within a designated subsection of this section.
- (d) A descriptive circular of statement briefly describing the securities.
- (e) The price at which the securities are to be sold.

(f) Names of the issuer or licensed brokers or dealers, if any, on whose behalf the notification is given.

The commission shall, for a period of 24 hours only from and after the receipt of any such notification accompanied by the proper fee as provided in Section 17, have the same powers on such notifications as it has on applications for registrations, and the same powers to deny the registration or to register the securities. Failure of the commission to take any formal action on a notification within said 24 hour period shall constitute a registration, subject to the terms of the notification, for those on whose behalf the notification was given.

The securities which may be submitted by notification of intention to sell are as follows:

Subsection 1. Any notes or bonds secured by a first mortgage or deed of trust upon real estate or leaseholds on real estate (not including oil, gas or mining property) situated in any state or territory of the United States or in the District of Columbia or in the Dominion of Canada.

(a) When the mortgage is upon agricultural lands used and valuable principally for agricultural purposes and the aggregate face value of the notes or bonds covered by such notification together with all notes or bonds already outstanding and equally secured by such mortgage does not exceed 70 per centum of the then fair market value of said lands, including any improvements appurtenant thereto.

(b) When the mortgage is upon city or village real estate or leaseholds and the aggregate face value of the notes or bonds covered by such notification together with all notes or bonds outstanding and equally secured by such mortgage does not exceed 70 per centum of the then fair market value of said real estate or leaseholds, including any improvements appurtenant thereto, and when said mortgaged property is used principally to produce through rental a net annual income, after deducting operating expenses and taxes, or has a fair rental value after deducting operating expenses and taxes, at least equal to the annual interest on such aggregate face value of notes or bonds plus not less than 3 per centum of the principal of said mortgage indebtedness.

(c) When the mortgage is upon city or village real estate or leaseholds upon which real estate or leaseholds a building or buildings is or are about in good faith forthwith to be erected according to the expressed terms of the mortgage and when reasonably adequate provision has been made for financing the full completion of said building free and clear of any lien superior to said mortgage, and the aggregate face value of the notes or bonds covered by such notification together with all notes or bonds outstanding and equally secured by such mortgage does not exceed 70 per centum of the fair market value of such mortgaged property, including the building or buildings to be erected thereon as aforesaid, and when said mortgaged property is to be used principally to produce through rental a net annual income, after deducting operating expenses and taxes, or will have a fair rental value after deducting operating expenses and taxes, at least equal to the annual interest on such aggregate face value of notes or bonds plus not less than 3 per centum of the principal of said mortgage indebtedness.

Subsection 2. Securities issued by any person owning a property, business, or industry which has been in continuous operation not less than five years, and which has shown during a period of not less than three years or more than ten years next prior to the close of its last fiscal year preceding the offering of such securities, average annual net earnings, after deducting all prior charges, not including the charges upon securities to be retired out of the proceeds of sale, and assets (not including patents, copyrights, secret processes, formulas, good will, trade marks,

trade brands, franchises, and other like intangible property), as of the date of the close of its last fiscal year preceding the offering of such securities together with the proceeds of the sale of such securities accruing to the issuer as follows:

(a) In the case of interest-bearing securities, not less than one and one-half times the annual interest charge thereon and upon all other outstanding interest-bearing obligations of equal rank, and assets at least equal to 125 per centum of the face value of such interest-bearing securities, and all other obligations of equal or prior rank outstanding and not to be retired out of the proceeds of the sale of such securities.

(b) In the case of preferred stock, not less than one and one-half times the annual dividend on such preferred stock and on all other outstanding stock of equal rank, and assets at least equal to 125 per centum of the par value of the aggregate amount of such preferred stock and all other outstanding preferred stock of equal rank, after the deduction from such assets of all indebtedness, which will be existing and all stock of senior rank which will be outstanding after the application of the proceeds of the preferred stock offered for sale.

(c) In the case of common stock, not less than 6 per centum upon all outstanding common stock of equal rank together with the amount of common stock then offered for sale, all reckoned upon the price at which said stock is then offered for sale or sold.

For the purpose of registering under this subsection securities of any issuer owning more than 50% of the outstanding voting stock of a subsidiary company, such issuer shall be deemed to be the owner of the business of the subsidiary company, and the earnings of the subsidiary company applicable to the payment of dividends upon all stock of the subsidiary company owned by such issuer shall be considered as earnings of such issuer. ('25, c. 192, §6; '27, c. 66, §6; Apr. 22, 1933, c. 408, §8.)

(2).

A newly created corporation acquiring assets of three other companies which have shown net earnings over a period of more than three years, may not avail itself of earning record of companies acquired and should be registered by application rather than by notification. Op. Atty. Gen. (616b-1), Sept. 23, 1937.

Where a newly organized company acquires by purchase a majority interest of stock in several operating companies, new company can avail itself of earning record of subsidiary companies and register by notification. Id.

(2) (c).

Holding company is not owner of business of subsidiary company for all purposes. *Gislason v. H.*, 194M476, 260NW833. See Dun. Dig. 1125a.

3996-7. Additional registrations.—Any issuer of registered securities for whom such registration was not made, and any licensed broker or dealer for whom any registration was not made, may, provided such registration is still in effect, serve notice on the commission of his intention to sell such registered securities or a portion thereof. Such notice must be in writing or by telegram, and when actually received by the commission shall constitute a registration of the securities for the person giving the notice. Such notice may be served as to securities to be registered and shall constitute a registration for the person giving the notice only upon the actual registration of the securities as in this Act otherwise provided. No fees shall be paid on such notices. The notice herein provided for shall not be construed to apply to an intention to sell a block of securities of the same issue as those covered by a registration, which block is not a part of such registered securities but in addition thereto. Where a block of securities is registered for more than one person each and every registration shall be exhausted when the total amount so registered has been sold under one or more of the registrations. ('25, c. 192, §7; Apr. 22, 1933, c. 408, §9.)

3996-8. Information to commission by registrants—Powers as to investigations, etc.

A bank stock holding company and its subsidiary acting as its dealer, held properly joined in an order suspending the licenses of the holding company and its dealers pending an investigation of the principal company by the state's securities commission. *Northwest Bancorporation v. B.* (USDC-Minn), 6FSupp704; 292US 606, 54SCR775, 54SCR720. See Dun. Dig. 1125a.

In a proceeding by the securities commission suspending, and possibly revoking, the exempt status of certain securities, the procedure provided for the investigation of sales of securities held applicable. *Id.*

The securities commission, conducting an investigation under the securities act, has no unlimited or arbitrary powers, and it is not contemplated that it conduct secret hearings and receive ex parte information, and it is bound to conform to its own orders as to the time and form of its hearings. *Id.*

Where commission suspends sale of registered securities pending a hearing to show cause, and before the hearing requests a cancellation of the registration, the commission cannot compel by mandamus a production of the records and papers of the corporation, at least without alleging a specific violation of the act. 172M 328, 215NW186.

3996-9. Brokers — licenses — applications. — No broker or dealer shall sell or profess the business of selling, any securities unless or until he shall have been licensed as a broker or dealer as hereinafter provided.

To secure a broker's or dealer's license application shall be made to the commission on forms prescribed by said commission, which application shall be signed and sworn to by such applicant and shall contain, in addition to other information which the commission may require, applicant's name and address or addresses at which the business is to be conducted, the names and addresses of all officers of the applicant, if a corporation, and of all persons interested in said business, if a partnership or unincorporated association, and a statement of the business to be transacted. The commission shall have power, in connection with applications for brokers' or dealers' licenses, to require applicant to furnish in such form as it shall designate any additional information deemed necessary to enable it to properly pass on the application before it; to order an appraisal, audit, or such other expert or technical examination and report as may seem necessary; and to make an investigation of the books, records, property, business and affairs of such applicant.

Upon compliance by an applicant for a broker's or dealer's license with the provisions of this act and the requirements of the commission, the commission shall either issue a license as prayed, or deny the application. The commission shall have power to deny if the applicant is not solvent, is of bad business repute, has violated any of the provisions of this Act, or any registration, license or lawful order of the commission, or has engaged in or is about to engage in any fraudulent transaction, or if it appears to the commission that the sale of securities by such applicant would work a fraud on purchasers thereof, or for good cause to the commission appearing. Denial shall be by written order.

Brokers' or dealers' licenses shall be good for one year from date of issuance, unless sooner suspended, cancelled or revoked, as hereinafter provided, and shall authorize the licensee therein named to transact business as a broker or dealer as herein defined and subject to provisions of this Act.

The commission shall have power in connection with any broker's or dealer's license which is not revoked or cancelled to require the licensee to furnish to the commission in such form as it may designate any information deemed necessary to assist the commission in determining whether such license should remain in force, whether such licensee is solvent, whether such licensee has violated or is about to violate any of the provisions of this Act or any registration, license or lawful order of the commission, has sold or is about to sell any fraudulent securities, has engaged in or is about to engage in any fraudulent transaction, or whether the sale of securities by such licensee will work a fraud on purchasers.

In such case the commission shall also have power to make an examination and investigation of the books, records, papers, accounts, property, business and affairs of such licensee, and to make or cause to be made on its behalf an audit of the accounts, books and records of such licensee, and by its order to require such licensee to permit such examination, investigation and audit to be made, and to require such licensee to submit to the commission his books, papers, records and accounts for the purpose of such examination, investigation and audit. Whenever the commission is in possession of information indicating that the licensee is not solvent, is of bad business repute, has violated or is about to violate any of the provisions of this act, or any registration, license or lawful order of the commission, has engaged in or is about to engage in any fraudulent transaction, or that the sale of securities by such licensee would work a fraud on purchasers thereof, or for good cause appearing to the commission, it may issue its order requiring such licensee to show cause why his license should not be revoked. In any such order the commission shall fix the time and place for hearing thereon, at which time a hearing shall be had. Any license may be suspended pending the final determination of any order to show cause, during which suspension it shall be unlawful for such licensee to transact any business as a broker or dealer. After the hearing the commission shall enter its order vacating such order to show cause and suspension, or permanently revoking the license, or making such other disposition of the matter as the facts require.

A broker's or dealer's license may be cancelled by the commission at any time at the request of the licensee.

Whenever it shall appear from evidence satisfactory to the Commissioner of Securities that any securities are being sold, have been sold, or are about to be sold, and with fraudulent intent, in violation of any of the provisions of this Act, or that in the issuance, sale, promotion, negotiation, advertisement, or disposition of any securities including any securities exempted by Section 3996-2 of Mason's Minnesota Statutes for 1927, or in any transaction exempted by Section 3996-3 of Mason's Minnesota Statutes for 1927, any person shall have employed, or employs, or is about to employ any device, scheme or artifice to defraud or for obtaining any money or property by means of any false pretense, representation or promise, whether the same be a representation or promise of a present existing fact or otherwise, or that any person shall have made, makes or attempts to make, fictitious or pretended sale of securities, including any securities exempted by Section 3996-2 of Mason's Minnesota Statutes for 1927, or in any transaction exempted by Section 3996-3 of Mason's Minnesota Statutes for 1927, the commissioner shall have power to apply for an injunction in any court of competent jurisdiction to restrain such unlawful acts or fraudulent practices, or such proposed unlawful acts or fraudulent practices, without abridging the penalties and other remedies by this Act provided;

And in addition thereto, whenever any of said facts in this Section referred to are made to appear, from evidence satisfactory to the commissioner, or whenever it shall be made to appear by satisfactory evidence to the commissioner that any of said companies licensed under this Act are operating or conducting their business, or have operated or conducted their business, contrary to the laws of this state, or with disregard to the rights of investors therein who have purchased securities or investment contracts, the Department of Commerce by and with the consent of the Governor of this state may apply to any court of competent jurisdiction for a receiver to be appointed for the property, assets, business and affairs of said person, firm, co-partnership, association or corporation, whose securities have been so sold, or who have sold or are selling such securities; and upon such showing

made to such court, the court shall appoint a receiver therefor to liquidate, wind up, conserve the assets of said person, firm, co-partnership, association or corporation, or to conduct or carry on such business, or otherwise dispose of the same with due regard to the rights of creditors and the holders and purchasers of said securities or investment contracts.

In any proceeding brought under the provisions of this Act in relation to injunction or receivership, the same may be brought on for hearing and disposition upon an order to show cause returnable upon not more than eight (8) days' notice to the defendant therein; and such cases shall have precedence over other cases upon the court calendar, and shall not be continued without the consent of the State of Minnesota, except upon good cause shown to the court, and then only for such reasonable length of time as may be necessary in the opinion of the court to protect the rights of the defendant party. (Act Apr. 22, 1933, c. 408, §10.)

Trader notified by broker that his margin is below his indebtedness to broker and below requirements, must act promptly to take care of his account and margin securities. *Conolly v. F.*, 186M8, 242NW334. See *Dun. Dig.* 1128a.

Trader failing to repudiate sale by broker to protect himself for period of four weeks and accepting balance of proceeds, ratifies sale. *Conolly v. F.*, 186M8, 242NW 334.

Where plaintiff's cause of action arises out of dealings with nonresident defendants and their associates as brokers in stocks, bonds, or securities, licensed under §3996-9, and such nonresident defendants have appointed commissioner of securities as their attorney irrevocable upon whom service of process may be made, pursuant to §3996-11, service of summons as therein prescribed conferred jurisdiction of persons of such nonresident defendants. *Kaiser v. E.*, 197M28, 265NW826. See *Dun. Dig.* 7814.

A state bank not having fiduciary powers granted by §7663 is without power to act as broker of securities, but one having such powers may act as broker. *Op. Atty. Gen.*, Aug. 1, 1933.

Trust companies organized under §§7730 to 7740 may act as brokers of securities. *Id.*

Broker or dealer selling securities to a bank, savings institutions, trust companies, insurance companies, licensed dealers and brokers, need not be licensed. *Op. Atty. Gen.* (616b-4), Dec. 3, 1934.

National banks are not required to procure a dealer's or broker's license under state securities law, but state is authorized to deal with transactions which are in excess of authority conferred by Congress and which violate laws of state. *Op. Atty. Gen.* (32b-1), Nov. 30, 1938.

3996-10. Agents — licenses — applications. — No agent shall sell any securities unless or until he shall have been licensed as hereinafter required; provided that this section shall not apply to an agent of an issuer selling securities exempted under Section 2 of this Act, or selling securities in a manner exempted under Section 3 of this Act. No agent shall be issued a license under this Act until he shall have resided in this state for one year immediately prior to making his application. Before any license shall be issued to an agent, other than an agent of a registered broker, he shall file a surety bond of such an amount as may be approved by the Commissioner for the benefit of the public or any dealer or issuer may file a surety blanket bond covering all of its licensed agents, or may deposit in and with a depository acceptable to and approved by the Commissioner of Securities, securities, cash or other collateral of such kind and in such amount and in such a manner as may be prescribed and approved by the Commissioner of Securities. The filing of such blanket bond by any licensed dealer or an issuer of securities duly registered or the deposit of securities as aforesaid, shall operate in lieu of a bond as required for the individual agents of such licensed dealer or registered issuer so long as such dealer is duly licensed under the terms of this Act or the securities of such issuer remain registered in conformance with the terms of this Act; provided, however, that the Commissioner of Securities shall have power to require an additional or new bond to be filed by such dealer or issuer when in the opinion of the Commissioner of Securities the bond

theretofore filed is insufficient due to the number of agents licensed for and on behalf of said dealer or issuer, or that the amount of the bond has become impaired by reason of liability contingent or accrued thereunder.

Agents' licenses shall be issued only to agents of issuers for whom securities are registered or to agents of licensed brokers or dealers.

To secure such license applications shall be made to the commission on forms prescribed by the commission, which application shall be signed and sworn to by the person desiring such license, shall contain the applicant's address, and such other information as the commission may require, and shall be accompanied by a statement signed by the issuer or broker or dealer for whom such applicant is agent stating that such issuer, broker, or dealer has appointed the person therein named as his agent. The commission shall have power to require the applicant or his principal to furnish such additional information regarding the agent as may seem necessary. Such application shall either be granted and license issued, or denied. The commission shall have power to deny an agent's application if the applicant is not of good business repute or has violated any of the provisions of this Act, or any registration, license or lawful order of the commission, or has engaged in any fraudulent transactions, or if it appears to the commission that the sale of securities by such applicant would work a fraud on purchasers thereof, or for good cause appearing to the commission. Denial shall be by written order. Agents' licenses shall be good for one year from date of issuance, unless sooner canceled, suspended or revoked, and shall authorize the licensee therein named to do anything his principal is authorized to do.

The commission shall have power, in connection with any agent's license outstanding, to require the agent or the issuer, broker, or dealer for whom such agent was licensed, to furnish to the commission in such form as it may designate, any information deemed necessary to assist the commission in determining whether such license should remain in force. Whenever the commission is in possession of information indicating that any licensed agent is not of good business repute, has violated or is about to violate any of the provisions of this Act, or any regulation, license or lawful order of the commission, or has engaged or is about to engage in any fraudulent transaction, or that the sale of securities by such licensee would work a fraud on purchasers thereof, or for good cause appearing to the commission, it may issue its order requiring such licensee to show cause why his license should not be revoked. In any such order the commission shall fix the time and place for hearing thereon, at which time a hearing shall be had.

Any agent's license may be suspended pending the final determination of any order to show cause, during which suspension it shall be unlawful for such licensee to act as such agent. After the hearing the commission shall enter its order vacating such order to show cause and suspension, or permanently revoking the license, or making such other disposition of the matter as the facts require.

On any matter pertaining to an agent's license, the issuer, broker, or dealer for whom such agent was appointed shall be deemed an interested party. Failure to secure an agent's license shall be deemed a violation of this Act by both the issuer, broker, or dealer and the agent.

An agent's license may be canceled by the commission at any time at the request of either the issuer, broker, or dealer for whom such agent was licensed, or the agent. ('25, c. 192, §10; '27, c. 66, §8; Apr. 22, 1933, c. 408, §11; Apr. 26, 1937, c. 481, §2.)

Requirements of Laws 1933, c. 408, as to residence and bond did not apply to existing holders of licenses. *Op. Atty. Gen.*, June 7, 1933.

Residence must be for one year immediately prior to making application for license. *Id.*

One licensed to sell securities as an agent of a licensed broker cannot sell securities as agent for a licensed dealer without specific license therefor. Op. Atty. Gen., June 28, 1933.

3996-11. Agents for service of process.—Every non-resident person shall, before having any securities registered or being licensed as a broker, dealer, or agent, appoint the "Commissioner of Securities," and his successor in office, his attorney upon whom process may be served in any action or proceeding against such person or in which such person may be a party, in relation to or involving any transaction covered by this Act, which appointment shall be irrevocable. Service upon such attorney shall be as valid and binding as if due and personal service had been made upon such person. Such service shall be by duplicate copies, one of which shall be filed in the office of the commission and the other immediately forwarded by registered mail to the person so served at the address on file with the commission. Provided, that any such appointment shall become effective upon the registration of the securities or the issuance of the license in connection with which such appointment was filed. ('25, c. 192, §11; Apr. 22, 1933, c. 408, §12.)

Jurisdiction conferred by this section upon Commissioner of Securities is not limited to typical Blue Sky suits, but extends to actions based upon fraud involving transactions which Securities Act is designed to prevent. Vogel v. C., (USDC-Minn), 19FSupp564.

Where Commissioner of Securities and his successor in office was designated by foreign corporation for service of process upon it, service upon such commissioner's deputy, during the commissioner's absence from the seat of government was good. Id.

Jurisdiction over nonresident corporation licensed in the state and authorized to carry on its business under the Securities Act could be obtained in any suit, whether it arose within the state or elsewhere. Stern v. N., (DC-Minn), 25FSupp948.

Jurisdiction may be acquired by service of process under this section only if suit is one in relation to or involving transaction covered by the act. Zochrisson v. R., 200M383, 274NW536. See Dun. Dig. 1125a(84), 7814.

License provided for in §§7493, 7494, is not license prescribed by §3996-11, and where a cause of action arises against a foreign corporation while it was licensed to do a brokerage business under §3996-11 and had appointed chairman of securities commission its agent to receive service, it could not be served with process under §7494 where its license to transact business as a foreign corporation was not granted until after cause arose. Anderson v. C., 193M443, 258NW743. See Dun. Dig. 7814.

Where plaintiff's cause of action arises out of dealings with nonresident defendants and their associates as brokers in stocks, bonds, or securities, licensed under §3996-9, and such nonresident defendants have appointed commissioner of securities as their attorney irrevocable upon whom service of process may be made, pursuant to §3996-11, service of summons as therein prescribed conferred jurisdiction of persons of such nonresident defendants. Kaiser v. B., 197M28, 265NW826. See Dun. Dig. 7814.

Service of summons on a foreign corporation, held valid and effective by service on Commissioner of Securities; it appearing that cause of action was based upon alleged violation of Blue Sky Law in sale of unregistered stock to plaintiff, in this state, while defendant was therein conducting its business as a licensed stock broker and had appointed commissioner its attorney to receive service. Streissguth v. C., 198M17, 268NW638. See Dun. Dig. 7814.

Service not having been attempted on commissioner of securities or secretary of state as agent for service of process, question of their agency to accept service of process is not in the case so as to affect validity of attempted service upon an alleged agent, doing business in state. Garber v. B., 285NW723. See Dun. Dig. 1125a.

3996-15. Advertising matter—regulations.—No person shall himself, or by or through others, or as agent or otherwise, publish, circulate, distribute, or cause to be published, circulated, or distributed, in any manner, any circular, prospectus, advertisement, printed matter, document, pamphlet, leaflet or other matter, pertaining (containing) or constituting an offer to sell any securities which have not been registered as herein provided.

No circular, prospectus, advertisement, printed matter, document, pamphlet, leaflet or other matter (hereinafter referred to as advertising matter) containing or constituting an offer to sell any securities which have been registered in compliance with the provisions of Sections 5 and 6 hereof, shall be pub-

lished, circulated, distributed, or caused to be published, circulated or distributed, in any manner, unless and until such advertising matter shall have been submitted in duplicate to the commission and approved by it. The commission shall have power to disapprove any such advertising matter which it deems in conflict with the purposes of this Act.

All such advertising matter shall carry the name and address of the issuer, broker, or dealer, circulating, publishing or distributing same, and shall make no reference to the registration of the securities or the issuance of a license by the commission.

The provisions of this section shall not apply to securities exempted under Section 2 of this Act, nor to sales of securities made in a manner exempted under Section 3 of this Act. ('25, c. 192, §14; Apr. 22, 1933, c. 408, §13; Apr. 26, 1937, c. 481, §3.)

(2) On notification of intention to sell, 50c per \$1,000 on the total proposed sale price of the securities covered by such notification; provided, that the minimum fee shall be \$10.00 and the maximum fee \$100.00. Provided, however, that the fee charged any cooperative association organized in good faith under the laws of this State shall not exceed \$5.00.

(3) On application for brokers' licenses, \$50.00.

(4) On application for agents' licenses, \$5.00.

(5) On application for dealers' licenses, \$100.00.

No application or notification of intention to sell shall be given any effect until the proper fee is paid. All fees and charges collected by the commission shall be covered into the state treasury. (As amended Apr. 22, 1933, c. 408, §13; Apr. 17, 1937, c. 243, §1.)

3996-17. Fees for registration of securities.—The following fees shall be paid to the commission:

(1) On application for registration, \$1.00 per \$1,000 on the total proposed sale price of the securities covered by such application; provided, that the minimum fee shall be \$25.00, and the maximum fee \$500.00. Provided, however, that the fee charged any cooperative association organized in good faith under the laws of this State shall be \$5.00.

(2) On notification of intention to sell, 50c per \$1,000 on the total proposed sale price of the securities covered by such notification; provided, that the minimum fee shall be \$10.00 and the maximum fee \$100.00. Provided, however, that the fee charged any cooperative association organized in good faith under the laws of this State shall not exceed \$5.00.

(3) On application for brokers' licenses, \$50.00.

(4) On application for agents' licenses, \$ 5.00.

(5) On application for dealers' licenses, \$100.00.

No application or notification of intention to sell shall be given any effect until the proper fee is paid. All fees and charges collected by the commission shall be covered into the state treasury. (As amended Apr. 22, 1933, c. 408, §14; Apr. 17, 1937, c. 243.)

3996-19. Investigations and powers of commission.

—Whenever the commission from information in its possession has reasonable ground to believe that any person within three years has sold, or is about to sell, any securities, including securities exempted by Section 2 hereof, and that such securities are or were fraudulent or are about to be or were sold in a fraudulent manner, or that such person in such sale or attempted sale of such securities has worked or will work a fraud on purchasers thereof, or that such person in such sale or attempted sale has violated or is about to violate any of the provisions of this Act, the commission shall have power to investigate said matters. In any such case the commission shall have power to make an examination and investigation of the books, records, papers, accounts, property, business and affairs of such person, and to make or cause to be made on its behalf an audit of the accounts, books and records of such person, and by its order to require such person to permit such examination, investigation and audit to be made and to require such person to submit to the commission his books, papers, records and accounts for the purpose of such examina-

tion, investigation and audit. If such securities were or are about to be sold for or on behalf of the issuer thereof the Commission shall have like powers as against such issuer.

If any person or issuer shall fail or refuse to obey any order of the commission, which it is authorized under this Act to make, requiring such person to permit an examination, investigation or audit of his books, records, papers or accounts by or on behalf of the commission and to submit the same to the commission for such purpose, the District Court, upon petition to the commission, subject to the limitations in Sections 7 and 10 of Article 1 of the State Constitution and in Articles 4 and 5 of the amendments to the Constitution of the United States, shall forthwith and without notice cause a search warrant to be issued directed to the sheriff commanding the sheriff forthwith to search for and seize the books, records, papers and accounts of such person or issuer and deliver them to the commission for the purpose of such examination. The petition of the commission filed with the District Court, if duly verified and sufficiently specific, or and any affidavit filed in such proceedings may be taken by the court as authority for the issuance of such search warrant; and all proceedings thereunder shall be substantially the same as like proceedings under Sections 10537 to 10540, both inclusive, General Statutes 1923. Any books, papers, records or accounts so seized shall be held by the commission for a reasonable length of time for the purpose of making such examination, investigation or audit and shall be then returned to the person from whose possession they were taken, unless otherwise ordered by the Court.

It shall have power to take such steps as are necessary to cause the arrest and prosecution of all persons guilty of any such violations. It shall be the duty of each county attorney to prosecute any violation of this Act in his county and upon his request or the request of the commission, the Attorney General shall assist in such prosecution.

The Attorney General shall assign from his staff an assistant attorney general who shall be attorney and counsel for the Division of Securities and the Department of Commerce, and shall have charge of and may conduct all prosecutions for the violation or prosecutions involving the violation of this Act and all other proceedings for the enforcement thereof.

The Bureau of Criminal Apprehension shall be at the service of the Division of Securities and the Department of Commerce and at the service of the assistant attorney general assigned thereto, for the purpose of detecting and apprehending any violators of this law and gathering evidence and otherwise aiding in the prosecution of such violators.

The commission may by summons or subpoena require the attendance and testimony of witnesses and the production of books or papers before it relating to any matter as to which it has jurisdiction under this Act. Such a summons or subpoena may be issued by any commissioner. It shall be served in the same manner as a summons or subpoena for witnesses in criminal cases issued on behalf of the state, and all provisions of law relative to a summons or subpoena issued in such cases shall apply to a summons or subpoena issued under this Act so far as applicable. Any commissioner may require any witnesses to be sworn before testifying. Any judge of the district court may, upon application by the Attorney General on behalf of the commission, compel the attendance of witnesses and the giving of testimony before the commission in the same manner and to the same extent as before said court.

A natural person who shall claim the privilege of refusing to testify on the ground that his testimony or evidence, documentary or otherwise, might tend to criminate or subject him to a penalty or forfeiture, shall not be excused on said ground from attending and testifying before the commission acting under the

provisions of this Act; but such natural person, having claimed said privilege and having been required nevertheless to testify, shall not be prosecuted or subjected to a penalty or forfeiture for, or on account of, any action, matter or thing, concerning which he may be required so to testify or produce evidence, except for perjury committed in such testimony. ('25, c. 192, §18; Apr. 22, 1933, c. 408, §15.)

172M328, 215NW186; note under §3996-8.

This section is constitutional, and the act is not invalid on the ground that its subject is not expressed in its title. Northwest Bancorporation v. B. (USDC-Minn), 6FSupp704, 292US606, 54SCR775, 54SCR720. See Dun. Dig. 8920.

That some of the acts drawn within the scope of an investigation of the operations of a bank stock holding company may be of a criminal nature does not render the investigation violative of constitutional rights. Id. See Dun. Dig. 1646.

The right of the commission to investigate violations of the securities act is restricted, and it must have reasonable ground to believe that such violations occurred within three years. Id. See Dun. Dig. 1125A.

Commission may investigate sales working a fraud on investors, though the acts complained were not made penal by the act at the time they were committed. Id.

Orders to subsidiary of licensee company held within powers of commission. Id.

Procedure under this section is applicable to proceeding under §3996-2(10) to revoke exempt status of stock. Id.

3996-22. Violations of law—Penalties.

Edson v. O., 190M444, 252NW217; note under §3996-4.

Streissguth v. C., 198M17, 268NW638; note under §3996-11.

A sale of securities in violation of the Blue Sky Law is void, and where third party rights have not intervened purchaser may recover in suit against seller without tender or rescission before trial. Stern v. N., (DC-Minn), 25FSupp948.

Sale of stock in violation of act is void. Drees v. M., 189M608, 250NW563. See Dun. Dig. 1125a.

Mere maintenance, with nothing more, by corporation which originally issued stock, of registrar and transfer agents, through which certain questioned sales of stock were cleared, is not enough to charge corporation or its management with aiding and abetting sales. Parr v. C., 196M325, 265NW287. See Dun. Dig. 1125a.

An officer of a corporation aiding and participating in illegal sale of stock or securities of his corporation, is liable to purchaser for money paid therefor. Id. See Dun. Dig. 1125a.

3996-24. Other actions or prosecutions not limited.

An action for damages for violation of Blue Sky Law accrues when sale is made, but where plaintiff draws his complaint on theory of actual fraud based on either expressed or implied representations the statute of limitations begins to run from time of discovery of the fraud. Stern v. N., (DC-Minn), 25FSupp948.

Action to recover money paid for stock sold in violation of act, no rescission or tender back of stock, held necessary under circumstances. Drees v. M., 189M608, 250NW563. See Dun. Dig. 1125a.

Action to recover money paid for stock sold in violation of act is not one in quasi contract for money had and received but for recovery on ground of tort. Id. See Dun. Dig. 1125a.

Plaintiffs by electing to sue as minority stockholders in a foreign corporation seeking an accounting and other equitable relief by virtue of their stock ownership, thereby waived alleged fraudulent practices by corporation in selling stock. Zochrisson v. R., 200M383, 274NW 536. See Dun. Dig. 1125a.

Measure of damages in an action for fraud in sale of corporate securities. 23MinnLawRev205.

3996-27. Certiorari from Supreme Court.

Determination of securities division denying registration for new financial plan, held not arbitrary or unreasonable. 178M623, 228NW162.

3996-29. Violation of act a felony.—Whoever shall with fraudulent intent sell, or cause to be sold, or in any manner participate, directly or indirectly, in the sale of any stocks, bonds, investment contracts or other securities, as in this Act defined, pursuant to any scheme or artifice to defraud, or by means of false or fraudulent pretenses, representations or promises, including fraudulent promises as to the worth or earnings of such stock in the future, or by means of any false or fictitious financial statement or representation as to the worth thereof, or otherwise, shall be guilty of a felony, and upon conviction thereof shall be punished in the same manner as upon con-

viction for obtaining money under false pretenses. (Act Apr. 22, 1933, c. 408, §15.)

This section and the following section are combined in a single section by Act Apr. 22, 1933, c. 408, §15, which is added to Mason's Minnesota Statutes, 1927, as §3996-30, but the title of the new act may be insufficient to carry the amendment. See note under §3996-1.

3996-30. Notice to be printed on circulars and stock certificates, bonds or other instruments.—Every circular, prospectus, advertisement, printed matter, document, pamphlet, leaflet or other matter containing or constituting an offer to sell securities registered by application shall have either printed or stamped on the face thereof in not less than ten-point, red bold-faced type the following (except that in case of newspaper and other advertising in publications of general circulation other coloring may be used):

NOTICE: While the laws of the State of Minnesota permit the sale of the securities herein described such legal permission does not mean that the State of Minnesota guarantees the success of the enterprise covered by such securities.

Each and every stock certificate, bond or other investment instrument, licensed and issued under the provisions of this Act, shall, upon delivery and sale, be accompanied by a certificate on the face of which the following shall appear:

NOTICE: While the laws of the State of Minnesota permit the sale of the attached securities such legal permission does not mean that the State of Minnesota guarantees the success of the enterprise covered by such certificate.

The failure on the part of any vendor of such stock certificate, bond or other investment instrument, licensed and issued under the provisions of this Act to attach to such certificate, bond or investment instrument the notice herein prescribed shall constitute a misdemeanor and be punished accordingly. (Act Apr. 22, 1933, c. 408, §15.)

This section is added to Mason's Minnesota Statutes, 1927, but the title may be insufficient to carry it. See note under §3996-1.

Act Apr. 26, 1937, c. 481, §4, provides: "Mason's Minnesota Statutes for 1927, section 3996-30, is hereby amended to read as follows:" following which there is a blank space. The Secretary of State's office has inserted the catch words, "Law repealed," but this is obviously insufficient as a repeal.

3996-30a. Assistant Attorney General for securities commission.—The attorney general shall appoint an assistant attorney general, to be in addition to the number now authorized by law, whose appointment shall be approved by the governor and who shall be attorney and counsel for the division of securities under the department of commerce, and shall have charge of and may conduct all prosecutions for violation of the securities laws of the state, and all other proceedings for the enforcement thereof. Such assistant shall receive the same salary as the other assistant attorneys general, which salary, and the expenses and disbursements of such assistant actually and necessarily incurred in the performance of his duties under this act, shall be paid from the moneys appropriated to and for the use of the commissioner of securities. (Act Apr. 25, 1931, c. 382, §1.)

The title of Act Apr. 25, 1931, c. 382, set forth herein as §3996-29 to 3996-35, is as follows: "An act creating a securities commission, prescribing the members thereof, defining the duties and powers of such members and fixing their salaries, providing certain regulations as to securities under the jurisdiction of said securities commission, transferring all rights, powers and duties now vested in the commissioner of securities under sections 3997, 3998 and 3999, Mason's Minnesota Statutes for 1927, and repealing inconsistent laws." This title seems rather unsuited to the provisions incorporated into the bill as enacted.

Sections 1 and 2 of this act are unconstitutional for not being expressed in the title of the act. Op. Atty. Gen., July 17, 1931.

3996-30b. Bureau of criminal apprehension to assist securities commission.—The bureau of criminal apprehension shall be at the service of the division of securities under the department of commerce and at

the service of the assistant attorney general designated as attorney for the division of securities for the purpose of detecting and apprehending violators of the securities laws of the state and gathering evidence and otherwise aiding in the prosecution of such violators.

At the request of the commissioner of securities or of said assistant attorney general, the county attorney of the county in which any violation of the securities laws of the state occur shall commence and conduct criminal prosecutions.

Upon the request of any county attorney, the commissioner of securities and said assistant attorney general shall give assistance in any criminal prosecution for the violation of the securities laws. (Act Apr. 25, 1931, c. 382, §2.)

Unconstitutional. See notes under §3996-30a.

3996-31. Brokers or agents to report sales.—The department of commerce may at any time or times require any issuer, broker or agent to report to the department of commerce all sales of any specified security registered or required to be registered under the securities law. Such reports shall be made within (10) days after demand therefor by the department of commerce and shall be open for inspection only to public authorities and then only upon a court order. Any person who shall make known in any manner not provided by law any information contained in such reports shall be guilty of a gross misdemeanor. (Act Apr. 25, 1931, c. 382, §3.)

3996-32. Notice to be printed on circular.

This section is amended by Act Apr. 22, 1933, c. 408, §15, and renumbered §3996-30. The text as amended is set forth, ante, as §3996-30. The amendment, however, may be unconstitutional as not embraced in the title of the amendatory act. See §3996-1, note.

Notice provided for in this section must be printed in each and every individual advertisement appearing in the newspaper. Op. Atty. Gen., July 11, 1931.

The notice required by this section must be inserted in each advertisement constituting an offer for sale of securities. Op. Atty. Gen., Dec. 3, 1931.

3996-33. Notice to be printed on stock certificate.

Amended and renumbered §3996-29. See note under §3996-32.

3996-34. Inconsistent acts repealed.—All acts or parts of acts now in effect inconsistent with the provisions of this act are hereby superseded, modified or amended to conform to and give full force and effect to the provisions of this act. (Act Apr. 25, 1931, c. 382, §6.)

3996-35. Effective July 1, 1931.—This act shall take effect and be in force from and after July 1, 1931. (Act Apr. 25, 1931, c. 382, §7.)

3996-36. Sale of liquor warehouse receipts declared to be sale of securities.—The sale of Warehouse Receipts for the storing of liquor during the aging or processing period of liquor in a duly bonded warehouse in any state other than the state of Minnesota, is hereby declared to be a sale of securities and/or investment contracts as defined by Section 3996-1 of Mason's Minnesota Statutes, 1927, and that the sale of such Warehouse Receipts is hereby permitted and legalized by duly licensed brokers and/or agents without having to procure a liquor license, when such liquor is not to be shipped nor imported into the State of Minnesota, except as authorized by law. (Apr. 6, 1937, c. 145, §1.)

Act is constitutional. Op. Atty. Gen. (218j-18), Apr. 26, 1937.

Warehouse receipts are securities for all purposes of registration and license under the securities law. Id.

3996-37. Same.—The sale of Warehouse Receipts for the storing of liquor during the aging or processing period in bonded warehouses within the state, is hereby declared to be a sale of securities and/or investment contracts, as defined by Section 3996-1 of Mason's Minnesota Statutes, 1927, and sales thereof are hereby permitted as provided in Section 2 hereof. (Apr. 6, 1937, c. 145, §2.)

3996-38. Brokers must obtain licenses.—Any Broker and/or Agent, before offering for sale or selling such Warehouse Receipts, shall obtain a Broker's and/or Agent's License, for the sale of securities, from the Commission, under the rules and regulations of the Department of Commerce. (Apr. 6, 1937, c. 145, §2.)

3996-39. Violation a gross misdemeanor.—Any person violating the provisions hereof, shall be guilty of a gross misdemeanor. (Apr. 6, 1936, c. 145, §3.)

Sec. 4 of Act Apr. 6, 1937, cited, provides that the Act shall take effect from its passage.

3997. Bank applications must be approved by state securities commission.

Trust companies may engage in banking business only upon compliance with this section. Op. Atty. Gen. (29a-30), Jan. 23, 1937.

3997-1. Department of Commerce need not give notice in certain cases.—That the Department of Com-

merce of this State may, at its discretion, dispense with the notice and hearing provided for by General Statutes 1923, Section 3997, in cases where application is made for the incorporation of a new bank to take over the assets of one or more existing banks, or where the application contemplates the re-organization of a national bank into a state bank in the same locality; Provided this act shall not increase the number of banks in the community affected. (Act Apr. 10, 1929, c. 146.)

SALE OF OIL AND GAS LANDS OR INTERESTS THEREIN

4000-1. Registration of lands or interests before sale by department of commerce.

A syndicate for acquisition of oil lands or interest therein may be organized without necessity of registration, but repeated or successive sales of interests must be registered. Op. Atty. Gen. (616d-8), Aug. 25, 1938.

CHAPTER 22

Forestry and Forest and Prairie Fires

Laws 1931, c. 186, ante, §§53-23a to 53-231, creates a new department of conservation, to which is transferred the power of the commissioner of forestry and fire prevention.

FORESTRY ACT

4031-1. Codification of forestry laws.

County commissioners in counties having state or federal forests, may establish districts and regulate the use of the lands therein. Laws 1939, c. 340.

Commission for study of forestry. Laws 1939, c. 418. It was competent for the Legislature to classify counties and to impose more drastic regulations for prevention of fires in certain counties than in others. 176M 472, 223NW912.

The subject of chapter 407, Laws 1925, known as the Forestry Act is sufficiently expressed in its title. 176M 472, 223NW912.

4031-6. Same—Officers—State forester—Etc.

In a criminal prosecution before a justice of the peace or in municipal court in a misdemeanor case, a forest ranger or patrolman may assist in presenting the evidence in behalf of the state by examination of the witnesses. Op. Atty. Gen., May 27, 1931.

It is not necessary for state employes to be accompanied by a companion while in forest. Op. Atty. Gen., July 6, 1933.

4031-10½ to 4031-10¾l. [Repealed.]

Repealed Apr. 21, 1939, c. 382, §9, post §4031-10¾u. The repealed sections consisted of Act April 22, 1933, c. 418, §§1-13.

ANNOTATIONS UNDER REPEALED SECTIONS

4031-10½a. Exchange of lands authorized.

Conservation Commission has no authority to exchange lands outside conservation zones in exchange for lands within such zones without concrete action of executive council and county board. Op. Atty. Gen., Sept. 28, 1933.

Commission is not authorized to exchange lands acquired by state under rural credit act for lands within conservation or forest areas. Id.

4031-10½m. Land exchange commission created.

There is hereby created a Land Exchange Commission, in this act called the Commission, which shall consist of the Governor, the Attorney General and the State Auditor. (Act Apr. 21, 1939, c. 382, §1.)

4031-10½n. Same—May exchange land to consolidate holdings.—For the purpose of consolidating the holdings of land owned by the state the Commission may, by unanimous approval, exchange any lands to which the state now holds title or to which title shall be acquired by the state, including lands held in trust for any purpose, for lands of equal value and kind owned by the United States or lands owned by private citizens or corporations. Provided, however, that the lands so acquired shall be subject to the trust, if any, to which the lands exchanged therefor were subject. The Commission is hereby author-

ized to convey in behalf of the state, title by deed attested by the commissioner of conservation, to any such lands so exchanged, provided, however, that in the deed of conveyance there shall be reserved to the state all minerals and all water power rights in the said state lands. Provided further that the exchange program under this act will be conducted in a manner that will not materially decrease but rather which will increase the state's total holdings of timber, and of water frontage desirable for public use and enjoyment. (Act Apr. 21, 1939, c. 382, §2.)

4031-10¾o. Commission may make terms of exchange.—Any exchange of land made under this act, may be made upon any condition as to payment of further compensation to the state which said commission may deem proper, and if payment of further compensation is required, such payment shall be made in such manner and upon such terms as the said commission shall determine, subject to the following limitations: if payment is not made at the time of the exchange, the unpaid balance shall be secured by contract for deed on the land of which the state is disposing, payable in ten equal annual installments with interest at 3 per cent per annum, payable annually, the first installment and the first interest to be due on December 1, following the date of the exchange. (Act Apr. 21, 1939, c. 382, §3.)

4031-10¾p. Owner may file proposal for exchange.—Any owner desiring to effect an exchange of lands hereunder shall file with the commissioner of conservation on a form furnished by said commissioner a proposal of exchange giving the legal description of his land and the state land for which he desires to exchange. With such proposal he shall present his affidavit describing fully any liens or encumbrances affecting the title thereto and that there is no person in possession of any part of said land claiming interest therein who has not joined in such request, and that no improvements have been made thereon for which any person has the right to assert a lien. (Act Apr. 21, 1939, c. 382, §4.)

4031-10¾q. Owner to furnish abstract of title.—Such proposal shall be reviewed by the Commissioner of Conservation and if he finds the proposed exchange would effect a desirable consolidation of state land holdings he shall require the applicant for exchange to furnish an abstract evidencing marketable title. Said commissioner shall thereupon cause an examination and appraisal to be made by men qualified as land or timber appraisers under existing laws, of the