

within 30 days from the date of rendition and shall be for the use of the board.

Subd. 3. Any information obtained by the board as a result of any proceeding authorized by this section shall be confidential except that on request a copy thereof shall be made available to a duly authorized representative of the professional corporation involved, and shall be immune from subpoena and inadmissible as evidence at a trial, hearing or proceeding before any court, board or commission except a proceeding before the board of the type authorized by section 12 hereof or an appeal of the type authorized by section 14 hereof.

Sec. 21. [319.21] **Regulations.** Each board shall have the power and authority to make reasonable regulations of the type authorized herein necessary to carry out the duties imposed upon it by this act.

Sec. 22. [319.22] **Savings clause.** Nothing contained herein is intended to alter the right of natural persons licensed to provide professional service, to organize as a partnership, an unincorporated association, a business trust, or any other form recognized under laws of this state.

Sec. 23. [319.23] **Severability.** If any provision of sections 1 to 22 of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or application of said sections which can be given effect without the invalid provision or application, and to this end the provisions of said sections are severable.

Approved May 6, 1961.

EXTRA SESSION

CHAPTER 2—S. F. No. 17

[Coded in Part]

An act relating to unfair trade practices in the dairy industry; amending Minnesota Statutes 1957, Section 362.31, Subdivisions 2, 3, 5, 8, 11, and 12, and adding a new subdivision; Section 362.32; Section 362.33, Subdivisions 1, 3 and 4; Section 362.34, Subdivisions 1, 2, and 6; and Section 362.37, Subdivision 1, and adding a new subdivision.

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Be it enacted by the Legislature of the State of Minnesota:

Section 1. Minnesota Statutes 1957, Section 362.31, Subdivision 2, is amended to read:

Subd. 2. "Selected dairy products" means "*milk*" for human consumption in fluid form, "fluid milk products" as defined in Minnesota Statutes ~~1953~~ 1957, Section 32.391, and "frozen foods" as defined in Minnesota Statutes ~~1953~~ 1957, Section 31.01, Subdivision 6, as amended by Laws 1955, Chapter 528, and cottage cheese. "~~Fluid milk products~~" and "~~frozen foods~~" shall have the meaning given them by the cited sections of Minnesota Statutes ~~1953~~, as amended by Laws 1955, Chapter 528.

Sec. 2. Minnesota Statutes 1957, Section 362.31, Subdivision 3, is amended to read:

Subd. 3. "Sell at retail", "sales at retail", and "retail sales" mean and include *selling of a selected dairy product for a monetary consideration for consumption on the premises where sold, dispensed, or served* and any transfer for a valuable consideration made in the ordinary course of trade or the usual course of the seller's business, of title to ~~tangible personal property~~ *a selected dairy product* to the purchaser for consumption or use other than resale or further processing or manufacturing. The above terms shall include any transfer of such property where title is retained by the seller as security for the payment of the purchase price.

Sec. 3. Minnesota Statutes 1957, Section 362.31, Subdivision 5, is amended to read:

Subd. 5. "Retailer" means any person engaged in the business of making sales of selected dairy products at retail within this state; provided that in the case of a person engaged in the business of making sales at both retail and wholesale such term shall apply only to the sales at retail made in the course of such business. *Home delivery sales, sales by the use of vending machines and sales direct to consumers through lease of a retailer's premises or any part thereof are sales at retail.*

Sec. 4. Minnesota Statutes 1957, Section 362.31, Subdivision 8, is amended to read:

Subd. 8. "Distributor" means any person doing business in this state *including a jobber or other similar marketing operation* engaged in selling at wholesale to a retailer any

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such selected dairy product manufactured or processed by such distributor *or jobber*, by a manufacturer, or by another distributor *or jobber*.

Sec. 5. Minnesota Statutes 1957, Section 362.31, is amended by adding a new subdivision to read:

Subd. 14. Any "wholesaler", "manufacturer" or "distributor" engaging in both retail sales and wholesale sales shall conform to the provisions of Minnesota Statutes 1957, Sections 362.31 to 362.39, and acts amendatory thereof applicable to each class of sales, whether they be retail sales or wholesale sales.

Sec. 6. Minnesota Statutes 1957, Section 362.32, is amended to read:

362.32 Unfair practices. No manufacturer, distributor or wholesaler, either directly or indirectly, or through a subsidiary or affiliate corporation, or by any officer, director, stockholder, employee, partner, agent or representative thereof, shall, for the purpose or with the effect of restraining, lessening or destroying competition or injuring one or more competitors or injuring one or more persons dealing in "selected dairy products" or to impair or prevent fair competition in the sale of selected dairy products to retailers in this state, ~~threaten or do~~ *engage in or threaten to engage in any of the trade practices or methods of doing business described in this section. Proof that any person has engaged in any of the trade practices or methods of doing business described in this section shall be prima facie evidence of an intent to violate or that it has the effect of violating the provisions of this section.*

a. Own, control or have any greater financial interest than five percent (5%) in any retail business selling or offering for sale any selected dairy product in this state unless the business name, address, nature and extent of ownership or control of such retail business by such manufacturer, distributor, or wholesaler shall be prominently displayed at all times at the main public entrance to the premises where such business is being conducted in type not less than 24-point Gothic capitals.

b. Purchase any real or personal property from a retailer and lease back or re-sell such property to the retailer under a deferred payment contract except as follows:

1. A written lease signed by both parties thereto

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specifying (a) the rental which shall be consistent with the value of like property in the locality where the retailer is located at the time the lease is executed, and (b) containing other terms and conditions consistent with leases of like property in that locality made at or about the same time by persons not having the relationship existing between the retailer, as the purchaser, and the lessor, as the seller, of a selected dairy product.

2. A written contract for the sale of such property signed by both parties thereto specifying (a) the purchase price which shall be consistent with the fair market value of like property in the locality where the retailer is located at the time the contract is executed, (b) the down payment on such purchase price, (c) the periodic payments on the unpaid balance thereof, and (d) containing other terms and conditions consistent with contracts of sale of like property in that locality made at or about the same time by persons not having the relationship existing between the retailer, as the purchaser, and the vendor, as the seller, of a selected dairy product.

No contract or agreement for the lease-back or re-sale to a retailer of any property purchased from such retailer by the wholesaler, manufacturer or distributor shall contain any requirement that the retailer shall purchase any selected dairy product from the other party to the contract for sale or the lease, or from any manufacturer, wholesaler or distributor.

c. Give, lend, or advance any money, credit or other thing of value to a retailer or to any person for the benefit or relief of a retailer, or furnish, give, lend, lease, or sell to a retailer any furniture, fixtures, fittings, or equipment, as an incentive or inducement to such retailer to purchase, handle, store, display, sell or trade in, any one or more selected dairy products of any manufacturer, wholesaler, or distributor. Nothing herein shall prevent any sale of furniture, trade fixtures, or equipment to a retailer in accordance with section 362.35, subdivision 1-a or the placing of refrigeration facilities on the premises of a retailer in accordance with section 362.36, subdivision 2.

d. Provide, pay for, guarantee, or in any other manner, directly or indirectly, assume, satisfy or discharge the cost or obligation of a retailer for painting, decorating, improving, repairing or rebuilding any existing billboard, out-

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door sign, display area, wall, fence, building or structure, or any other type of outdoor display advertising having a fixed location, or build, construct, erect, or purchase any new billboard, outdoor sign, or other outdoor advertising having a fixed location, or any structure or facility for use as an outdoor display for the direct benefit of a retailer except that if no reference is made to any retailer, a manufacturer, wholesaler, or distributor may engage in all forms of outdoor advertising to advertise one or more selected dairy products which he manufactures, processes or distributes.

e. Have any interest in or pay for any license for a retailer or advance, furnish, lend or give money for the payment of any license fee for a retailer or any expense incident to the obtaining of any such license, except that a manufacturer, wholesaler, or distributor may purchase in his own name any license required by law for the sale of his selected dairy products in this state or any municipality therein.

f. Become bound in any manner for the repayment of any loan of money or the fulfillment of any financial obligation of any retailer.

g. Extend or give any additional credit to a retailer at a time when there has been due from such retailer for more than 40 days any indebtedness arising out of the delivery to him of selected dairy products.

h. Furnish and maintain inside signs of a permanent nature unless such signs are used only for advertising or promoting one or more selected dairy products manufactured, distributed or sold by the person furnishing such sign, or items of food made principally from a selected dairy product so advertised or the brand name of the selected dairy product so advertised, or any combination thereof. The furnishing of "point of sale" advertising material made of paper or other like materials to a retailer free of charge for the sole purpose of promoting the sale of a selected dairy product of the person furnishing the same shall not constitute a violation of sections 362.31 to 362.39.

i. Furnish, give, lend, finance, pay for, contribute to or by any other means, scheme or device, participate in cooperative advertising using newspapers, radio, television or any other advertising media if any retailer selling, handling or offering for sale any selected dairy product of such manufacturer, wholesaler or distributor is named or other-

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wise identified or referred to in such advertising, except that a manufacturer, wholesaler or distributor may purchase and pay for such lineage or space actually used in advertising one or more of his or its selected dairy products in a newspaper advertisement, handbill or other form of printed advertising put out by a retailer or for the time actually so used in any radio or television program sponsored by a retailer.

j. Pay, loan or give money, credit, compensation, or anything of value to a retailer for the privilege of placing a sign, advertisement or other sales promotion material in or upon the premises of the retailer, or for storing, advertising, or displaying any selected dairy product in connection with its sale or promotion (except that a manufacturer, wholesaler or distributor may furnish paint and maintain an insulated truck body used exclusively in the sale and delivery of his or its selected dairy products by the person making retail sales thereof).

k. No wholesaler, manufacturer, or distributor shall credit to the account of or pay any retailer for any selected dairy product which the retailer claims to have become stale, spoiled or otherwise unsaleable unless the particular product for which such credit or payment is sought is in fact spoiled or otherwise unsaleable.

l. In connection with any sale to a distributor or retailer in this state of a selected dairy product, make or offer to make any gift of money, merchandise, trading stamps, coupons, service, supplies, or anything of value, or to grant or offer to grant any rebate, discount, or advertising allowance other than as expressly permitted by sections 362.31 to 362.39.

m. Charge a combined price for any selected dairy product together with another commodity or a service which is less or is represented to be less than the aggregate of the price of the particular selected dairy product and the price or value of such other commodity or service when sold or offered for sale separately, or from otherwise applying or attempting to apply any method or device in the sale or distribution of a selected dairy product intending to defeat the policy of sections 362.31 to 362.39 or to defeat or evade any provision of sections 362.31 to 362.39 or any order, ruling or regulation issued by the commissioner thereunder.

n. The provisions of Minnesota Statutes 1957, Section 325.04, shall apply to and include a manufacturer of any se-

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lected dairy product. No manufacturer, wholesaler, distributor or retailer of a selected dairy product engaged in business within this state shall sell, offer for sale or advertise for sale any selected dairy product below "cost" as that term is defined in Minnesota Statutes 1957, Section 325.01, or give, offer to give, or advertise the intent to give away any selected dairy product for the purpose or with the effect of violating Minnesota Statutes 1957, Sections 325.03, 325.04, 325.06 or Sections 362.32, 362.34, 362.35. The prima facie evidence provisions of section 325.52 shall apply to any such violation. And it is the legislative intent that the provisions for relief set forth in section 362.37 shall apply to any legal action under this paragraph.

Sec. 7. Minnesota Statutes 1957, Section 362.33, Subdivision 3, is amended to read:

Subd. 3. The commissioner is authorized and empowered to call together manufacturers, distributors, wholesalers, retailers and producers of selected dairy products manufactured, processed, produced or sold in this state for the purpose of inquiry into trade practices prevailing from time to time in this state, and if need be, to conduct hearings in connection with such trade practices for the purpose of making findings relative to any trade practice found to exist within this state involving the manufacture, sale or distribution of any selected dairy product covered by sections 362.31 to 362.39, and thereafter to promulgate rules or regulations for the elimination of any trade practice found to be contrary to the provisions of sections 362.31 to 362.39. All such rules and regulations shall be adopted and all such hearings shall be held in accordance with the provisions of Laws 1945, Chapter 452, as amended, and for the purpose of any such hearing the commissioner shall have the power to subpoena witnesses and otherwise require as provided by law the production of evidence, either oral or written, respecting the subject matter of the particular hearing, but no person or witness in any such hearing so conducted shall be subject to any penalty for or on account of any transaction, matter or thing concerning which he may be thus required to testify or produce evidence, documentary or otherwise.

In addition to the powers and duties set forth above, whenever the commissioner or his duly authorized agent have good reason to believe that the testimony of any person who is a party to any transaction prohibited by Minnesota Statutes 1957, Sections 362.31 to 362.39 and acts amendatory

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thereof or the books of account or other business records of any such person is material or pertinent to any inquiry of prevailing trade practices, the commissioner or his duly authorized agent shall have the power to issue subpoenas to take the testimony under oath of any such person and to have such person produce his books of account or other business records material or pertinent to such inquiry for examination by the commissioner or his authorized agent at all reasonable times.

Sec. 8. Minnesota Statutes 1957, Section 362.33, Subdivision 4, is amended to read:

Subd. 4. For the purpose of administering and enforcing the provisions of sections 362.31 to 362.39, each manufacturer subject to sections 362.31 to 362.39 shall pay to the commissioner a fee of ~~four mills (\$0.004)~~ *4.6 mills (\$0.0046)* per cwt. on all milk processed or used in the manufacture of a selected dairy product sold in this state or manufactured in this state for sale therein except frozen foods on which the fee shall be ~~one mill (\$0.001)~~ *one and 15/100 mills (0.00115)* on each gallon of frozen foods sold in this state or manufactured in this state for sale therein. Such fees shall be the maximum fees. The commissioner may fix such fees at a lesser amount and may adjust such fees from time to time whenever he finds that the cost of administering and enforcing the provisions of sections 362.31 to 362.39 can be defrayed with such below maximum fees. The fees thus computed shall be paid by the manufacturer to the commissioner on or before the 15th day of the month following the month in which such frozen foods were sold in this state or a selected dairy product manufactured in this state from such milk was sold therein. The amounts so received by the commissioner shall be deposited with the state treasurer and shall constitute a separate account to be known as the "Dairy Industry Unfair Trade Practices Account" which is hereby created, set aside and appropriated as a revolving fund to be used to defray the cost of administering and enforcing sections 362.31 to 362.39.

Sec. 9. Minnesota Statutes 1957, Section 362.34, Subdivision 1, is amended to read:

362.34 Schedule of prices. Subdivision 1. Each manufacturer, wholesaler and distributor shall ~~post for public inspection, and at all times keep posted in a prominent public place in his business office in each plant or place of business where a selected dairy product is sold or offered for~~

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sale to retailers, *file with the commissioner* a dated schedule of current wholesale prices showing all rebates, discounts, refunds and price differentials for the selected dairy products offered for sale at wholesale by the person ~~posting~~ *filing* such price schedule, to retailers or to any other person for sale at wholesale to a retailer. Any discount given a retailer for the volume of a selected dairy product delivered in a given period of time at a specific location must reflect *only* the savings in delivery costs to the seller *provided always that where a retailer or distributor is supplied with selected dairy products by more than one manufacturer, wholesaler or distributor, then the total volume of the selected dairy products supplied to such retailer by all such suppliers shall determine the only discount he shall receive from any person and shall be uniform as to the same discount shall be allowed to all other retailers in the same area purchasing the same quantity of the particular selected dairy product from the same seller in the same period of time. Upon demand of the commissioner all such discounts shall be justified by the seller granting the same.* A manufacturer, wholesaler or distributor selling a selected dairy product of any class at wholesale to another manufacturer, wholesaler or distributor shall not be required to ~~post or~~ file a schedule of prices on any selected dairy product so sold, but if the first purchaser in any such transaction buys the selected dairy product for the purpose or with the intent of reselling the same to a retailer, then the first purchaser shall ~~post and~~ file his schedule of prices for each class of selected dairy products he sells or intends to sell to a retailer. If a person acts as agent for one or more retailers in purchasing a selected dairy product, all such sales ~~for the purposes of sections 362.31 to 362.39~~ shall have the status of a sale at wholesale to a retailer and in each such sale the manufacturer, wholesaler or distributor making such sale shall ~~post and~~ file his schedule of prices on each class of selected dairy products sold or to be sold to such agent. A manufacturer, wholesaler or distributor selling a selected dairy product to a retailer shall furnish to the retailer, at the time of negotiating any sale, the seller's current price list for the selected dairy products sold and shall supply the retail customer with all such subsequent applicable price lists.

Sec. 10. Minnesota Statutes 1957, Section 362.34, Subdivision 2, is amended to read:

Subd. 2. Price schedules on any class of selected dairy products can be superseded, changed or withdrawn only on

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forms prescribed and furnished by the commissioner and by ~~(posting)~~ as specified above, the new or modified price schedule and filing a copy thereof with the commissioner at least ~~three (3)~~ *ten (10)* full business days before the new schedule becomes effective and until that time, the old schedule shall continue in force. *Any new price schedule shall continue unchanged for ten full business days. The commissioner is authorized and empowered to investigate any price for any selected dairy product on any schedule or prices filed with the commissioner which appear to be in violation of Minnesota Statutes 1957, Sections 325.04, 325.06, 325.52, and Sections 362.31 to 362.39, and acts amendatory thereof, and to suspend the effective date of any such price for a period of ten calendar days or during the period of such investigation, whichever is the lesser, and upon such suspension shall give prompt notice thereof by mail to the person filing such price schedule. If within this ten day period the commissioner fails to determine that such suspended price is invalid, it shall be presumed to be a valid price, effective at the expiration of the ten day period. If the commissioner determines the price to be invalid, he shall so advise in writing the person filing such price schedule. If the person filing a price schedule containing a price which is suspended fails or refuses upon written request of the commissioner to make available all of his record pertinent to the determination of the validity of such suspended price, the period of suspension may be extended by the commissioner for a period of ten days from the time such records are made available. Upon written request to the commissioner by any person who has filed a price schedule hereunder for information concerning any price schedule, the commissioner, if satisfied that such request is bona fide and is made by a person who is in direct competition with the person whose price schedule is requested, shall comply with such request; otherwise all price schedules filed with the commissioner shall be confidential and shall not be disclosed unless necessary to prepare or institute legal action.*

Sec. 11. Minnesota Statutes 1957, Section 362.34, Subdivision 6, is amended to read:

Subd. 6. A manufacturer, wholesaler or distributor not having an established place of business in this state, before selling or delivering any selected dairy product in this state, shall ~~post and keep posted in each vehicle or other place from which the selected dairy products of such manufacturer, wholesaler or distributor are sold, a copy of the cur-~~

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rent price schedule covering each class of selected dairy products offered for sale in this state and shall file its price schedules on such products with the commissioner as above specified and shall thereafter be governed by *Minnesota Statutes 1957, Sections 362.31 to 362.39, and acts amendatory thereof*, on all sales or deliveries of its selected dairy products in this state.

Sec. 12. Minnesota Statutes 1957, Section 362.37, Subdivision 1, is amended to read:

362.37 Redress for injuries. Subdivision 1. Any person who shall be injured in his business or property by reason of anything forbidden by sections 362.31 to 362.39, or the commissioner in his own name or on behalf of any such person, shall be entitled to sue therefor in any court of competent jurisdiction and shall be entitled to recover three fold the damage by him sustained and the costs of suit, including reasonable attorneys fees. Any person injured or who is threatened with injury or loss by reason of anything forbidden by sections 362.31 to 362.39, or the commissioner in his own name or on behalf of any such person, shall be entitled to sue for and have injunctive relief in any court of competent jurisdiction *against all persons involved in any violation or threatened violation of Minnesota Statutes 1957, Sections 362.31 to 362.39, and acts amendatory thereof, to prevent and restrain violations or threatened violations thereof* without alleging or proving actual damages or that an adequate remedy at law does not exist, *so that injunctive relief can be obtained promptly without awaiting injury or actual damage.* Such injunctive relief shall not abridge or be in lieu of any other civil remedy provided in sections 362.31 to 362.39.

Sec. 13. Minnesota Statutes 1957, Section 362.37, is amended by adding a new subdivision to read:

Subd. 5. (a) Whenever the commissioner shall have reason to believe that any person is violating any of the provisions of Minnesota Statutes 1957, Sections 362.31 to 362.39, and acts amendatory thereof, or any promulgated rule, and it shall appear to the commissioner that a proceeding in respect thereof is warranted, he shall serve upon such person or persons a complaint stating his charges in that respect containing a notice of hearing upon a day and at a place therein fixed at least twenty days after the service of said complaint. The person or persons so complained of shall have the right to appear at the place and time so fixed and

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show cause why an order should not be entered by the commissioner requiring such person or persons to cease and desist from the violation of the law so charged in said complaint. Any person may make application, and upon good cause shown, may be allowed by the commissioner to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the commissioner. If upon such hearing the commissioner shall be of the opinion that there has been a violation of any of the provisions of Minnesota Statutes 1957, Sections 362.31 to 362.39, and acts amendatory thereof, or any promulgated rule, he shall make a report in writing in which he shall state his findings as to the facts and shall issue and cause to be served upon such person or persons an order requiring them to cease and desist from such violation. The commissioner may at any time after notice and opportunity for hearing, reopen and alter, modify or set aside, in whole or in part, any order issued by him under this section, whenever in the opinion of the commissioner conditions so justify.

(b) *Any person required by an order of the commissioner to cease and desist from any act or practice may obtain a review of such order in the district courts of this state by filing in the court, within twenty days from the date of service of such order a written petition praying that the order of the commissioner be set aside. A copy of such petition shall be forthwith served upon the commissioner and thereupon the commissioner shall certify and file in the court a transcript of the entire record and order of the commissioner. Upon the filing of the petition and transcript, the court shall have jurisdiction of the proceeding and of the question determined herein and shall have power to make and enter upon the pleadings, evidence and proceedings set forth in such transcript a decree, affirming, modifying, or setting aside the order of the commissioner or enforcing the same to the extent that such order is affirmed, and to issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public or to competitors pendente lite. The findings of the commissioner as to the facts, if supported by the evidence in the proceeding before the commissioner, shall be conclusive. To the extent that the order of the commissioner is affirmed, the court shall thereupon issue its own order commanding obedience to the terms of such order of the commissioner. If either party shall apply to the court for leave to adduce additional*

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evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commissioner, the court may order such additional evidence to be taken before the commissioner and to be adduced upon the hearing in such manner and upon such terms and conditions as the court may deem proper. The commissioner may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken and he shall file such modified or new findings which, if supported by the evidence, shall be conclusive and his recommendation, if any, for the modification or setting aside of his original order with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the supreme court.

(c) Violations of any cease and desist order of the commissioner shall be punished by the district court under existing laws of contempt. Each day of failure to obey a cease and desist order of the commissioner may be deemed a separate violation and each violation of a particular act enjoined by the court may be deemed a separate violation.

Sec. 14. Minnesota Statutes 1957, Section 362.31, Subdivision 11, is amended to read:

Subd. 11. "Department" means the Department of ~~Business Development~~ *Agriculture, Dairy and Food.*

Sec. 15. Minnesota Statutes 1957, Section 362.31, Subdivision 12, is amended to read:

Subd. 12. "Commissioner" means the Commissioner of ~~Business Development~~ *Agriculture, Dairy and Food.*

Sec. 16. Minnesota Statutes 1957, Section 362.33, Subdivision 1, is amended to read:

Department of agriculture, powers. Subdivision 1. Sections 362.31 to 362.39 shall be administered by the Department of ~~Business Development~~ *Agriculture, Dairy and Food.*

Approved May 11, 1961.

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