

CHAPTER 84—S.F.No.951  
[Coded in Part]

*An act relating to food; providing for the regulation and control of its manufacture, distribution and sale; prescribing penalties; amending Minnesota Statutes 1971, Chapter 31, by adding sections; Sections 31.01, Subdivisions 2, 3, and 4, and by adding subdivisions; 31.02; 31.04; 31.05; 31.14; and 32.021, Subdivision 2; and repealing Minnesota Statutes 1971, Section 31.01, Subdivisions 5 and 19.*

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

**Section 1. [31.001] FOOD AND FOOD PRODUCTS; MANUFACTURE, DISTRIBUTION AND SALE; CITATION.** Sections 1 and 2 and Minnesota Statutes, Chapter 31 may be cited as the Minnesota food law.

**Sec. 2. [31.002] POLICY.** It is the policy of this state to seek to achieve and maintain uniformity with the federal government and with other states insofar as possible, of regulation and control of the manufacture, distribution and sale of food in this state. To that end it is desirable and necessary that federal regulations adopted under authority of the federal act become state regulations, and such regulations shall be promulgated pursuant to state law.

**Sec. 3.** Minnesota Statutes 1971, Section 31.01, Subdivision 2, is amended to read:

**Subd. 2. PERSON.** "Person" means any individual, firm, partnership, copartnership, society, association, company, or corporation and includes any trustee, receiver, assignee or other similar representative thereof.

**Sec. 4.** Minnesota Statutes 1971, Section 31.01, Subdivision 3, is amended to read:

**Subd. 3. FOOD.** "Food" ~~includes every article—means articles~~ used for ; entering into the consumption of; or used or intended for use in the preparation of; food ;—or drink ; confectionery; or condiment for man ;—or other animals, whether simple, mixed, or compound—chewing gum, and articles used for components of any such article .

**Sec. 5.** Minnesota Statutes 1971, Section 31.01, Subdivision 4, is amended to read:

**Subd. 4. SELL AND SALE.** "Sell" and "sale" shall be considered to include the keeping, offering or exposing for sale, use, transportation, or exchange of the restricted, regulated, or prohibited—manufacture, production, processing, packing, exposure, offer, possession, and

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~~holding of any such article for sale; the having and the sale, dispensing, and giving 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—supplying or applying of any such article in the conduct of any food operation.~~

Sec. 6. Minnesota Statutes 1971, Section 31.01, is amended by adding a subdivision to read:

Subd. 20. CONSUMER COMMODITY. "Consumer commodity", except as otherwise specifically provided by this subdivision, means any food as defined in section 4 or by the federal act. Such term does not include:

(a) Any tobacco or tobacco product;

(b) Any commodity subject to packaging or labeling requirements imposed under Minnesota Statutes, Chapter 24, or Sections 35.40 to 35.60.

(c) Any drug subject to the provisions of Minnesota Statutes, Sections 151.34 to 151.40.

(d) Any beverage subject to the provisions of Minnesota Statutes, Chapter 340.

(e) Any commodity subject to the provisions of Minnesota Statutes, Chapter 21.

Sec. 7. Minnesota Statutes 1971, Section 31.01, is amended by adding a subdivision to read:

Subd. 21. LABEL. "Label" means a display of written, printed, or graphic matter upon the immediate container of any article, and includes a like display, if required by law or regulation, on the outside container or wrapper, if any there be, of the retail package of such article.

Sec. 8. Minnesota Statutes 1971, Section 31.01, is amended by adding a subdivision to read:

Subd. 22. PRINCIPAL DISPLAY PANEL. "Principal display panel" means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

Sec. 9. Minnesota Statutes 1971, Section 31.01, is amended by adding a subdivision to read:

Subd. 23. IMMEDIATE CONTAINER. "Immediate container" does

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not include package liners.

Sec. 10. Minnesota Statutes 1971, Section 31.01, is amended by adding a subdivision to read:

Subd. 24. PACKAGE. "Package" means any container or wrapping in which any consumer commodity is enclosed for use in the delivery or display of that consumer commodity to retail purchases, but does not include:

(a) Shipping containers or wrappings used solely for the transportation of any consumer commodity in bulk or in quantity to manufacturers, packers, or processors, or to wholesale or retail distributors thereof; or

(b) Shipping containers or outer wrappings used by retailers to ship or deliver any commodity to retail customers if such containers and wrappings bear no printed matter pertaining to any particular commodity.

Sec. 11. Minnesota Statutes 1971, Section 31.01, is amended by adding a subdivision to read:

Subd. 25. LABELING. "Labeling" means all labels and other written, printed, or graphic matter upon an article or any of its containers or wrappers, or accompanying such article.

Sec. 12. Minnesota Statutes 1971, Section 31.01, is amended by adding a subdivision to read:

Subd. 26. ADVERTISEMENT. "Advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of food.

Sec. 13. Minnesota Statutes 1971, Section 31.01, is amended by adding a subdivision to read:

Subd. 27. CONTAMINATED WITH FILTH. "Contaminated with filth" applies to any food not securely protected from dust, dirt and, as far as may be necessary by all reasonable means, from all foreign or injurious contaminations.

Sec. 14. Minnesota Statutes 1971, Section 31.01, is amended by adding a subdivision to read:

Subd. 28. PESTICIDE CHEMICAL. "Pesticide chemical" means any substance which, alone, in chemical combination, or in formulation with one or more other substances is an "economic poison" within the meaning of Minnesota Statutes, Chapter 24, or the federal insecticide, fungicide and rodenticide act (7 U.S.C. Sections 135-135k), as

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amended, and which is used in the production, storage, or transportation of raw agricultural commodities.

Sec. 15. Minnesota Statutes 1971, Section 31.01, is amended by adding a subdivision to read:

**Subd. 29. RAW AGRICULTURAL COMMODITY.** “Raw agricultural commodity” means any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

Sec. 16. Minnesota Statutes 1971, Section 31.01, is amended by adding a subdivision to read:

**Subd. 30. FOOD ADDITIVE.** “Food additive” means any substance the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food; including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; and including any source of radiation intended for any such use; if such substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures, or in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food, to be safe under the conditions of its intended use; except that such term does not include:

(a) A pesticide chemical in or on a raw agricultural commodity; or

(b) A pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity; or

(c) A color additive; or

(d) Any substance used in accordance with a sanction or approval granted prior to the enactment of the food additives amendment of 1958, pursuant to the federal act; the poultry products inspection act (21 U.S.C. 451 et seq.) of the meat inspection act of March 4, 1907 (34 Stat. 1260), as amended and extended (21 U.S.C. 71 et seq.).

Sec. 17. Minnesota Statutes 1971, Section 31.01, is amended by adding a subdivision to read:

**Subd. 31. COLOR ADDITIVE.** “Color additive” means a material which

(a) is a dye, pigment, or other substance made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise de-

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rived, with or without intermediate or final change of identity, from the vegetable, animal, mineral, or other source, and

(b) when added or applied to a food is capable, alone or through reaction with other substance, of imparting color thereto; except that such term does not include any material which has been or hereafter is exempted under the federal act.

"Color" includes black, white and intermediate grays. Nothing in this subdivision shall be construed to apply to any pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly, the growth or other natural physiological process of produce of the soil and thereby affecting its color, whether before or after harvest.

Sec. 18. Minnesota Statutes 1971, Section 31.01, is amended by adding a subdivision to read:

Subd. 32. FEDERAL ACT. "Federal act" means the federal food, drug, and cosmetic act, as amended (Title 21 U.S.C. 301 et seq.).

Sec. 19. Minnesota Statutes 1971, Section 31.02, is amended to read:

**31.02 PROHIBITED ACTS.** 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. The following acts set out in this section and the causing of such acts within this state are prohibited.

(a) The manufacture, sale, or delivery, holding or offering for sale of any food that is adulterated or misbranded;

(b) The adulteration or misbranding of any food;

(c) The receipt in commerce of any food that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise;

(d) The distribution in commerce of a consumer commodity, as defined in section 6, if such commodity is contained in a package, or if there is affixed to that commodity a label, which does not conform to the provisions of law and of regulations promulgated pursuant to section 26; provided, however, that this prohibition shall not apply to persons engaged in business as wholesale or retail distributors of consumer commodities except to the extent that such persons are engaged in the packaging or labeling of such commodities, or prescribe or specify by any means the manner in which such commodities are packaged or labeled;

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(e) The sale, delivery for sale, holding for sale, or offering for sale of any article in violation of section 34;

(f) The dissemination of any false advertisement;

(g) The refusal to permit entry or inspection, or to permit the taking of a sample, or to permit access to or copying of any record as authorized by section 23;

(h) The giving of a guaranty or undertaking which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same effect signed by, and containing the name and address of the person residing in the state of Minnesota from whom he received in good faith the food;

(i) The removal or disposal of a detained or embargoed article in violation of section 25;

(j) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to a food if such act is done while such article is held for sale and results in such article being adulterated or misbranded;

(k) Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label, or other identification device authorized or required by regulations promulgated under the provisions of section 26 or of the federal act; and

(l) The using by any person to his own advantage, or revealing, other than to the commissioner or his authorized representative or to the courts when relevant in any judicial proceeding of any information acquired under authority of the Minnesota food law concerning any method or process which as a trade secret is entitled to protection.

Sec. 20. Minnesota Statutes 1971, Chapter 31, is amended by adding a section to read:

[31.021] DETERMINATION OF MISLEADING. If an article is alleged to be misbranded because the label is misleading, or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading, there shall be taken into account, among other things, not only representations made or suggested by statement, word, design, sound, or in any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual.

Sec. 21. Minnesota Statutes 1971, Chapter 31, is amended by adding changes or additions indicated by underline deletions by ~~strikeout~~

ing a section to read:

**[31.031] INJUNCTION PROCEEDINGS.** In addition to the remedies hereinafter provided and irrespective of whether there exists an adequate remedy at law, the commissioner is hereby authorized to apply to the district courts of this state, and other appropriate courts, for a temporary restraining order or a temporary or permanent injunction restraining any person from violating any provisions of section 19, and prohibiting any person from engaging in any actions which the commissioner deems likely to cause or result in violations of section 19.

Sec. 22. Minnesota Statutes 1971, Chapter 31, is amended by adding a section to read:

**[31.032] PENALTIES AND GUARANTY.** Subdivision 1. Any person who violates any of the provisions of section 19 is guilty of a misdemeanor.

Subd. 2. No person shall be subject to the penalties of subdivision 1 for having violated section 19, clauses (b) or (d), if he establishes a guaranty or undertaking signed by, and containing the name and address of, the person residing in the state of Minnesota from whom he received in good faith the article, to the effect that such article is not adulterated or misbranded within the meaning of the Minnesota food law.

Subd. 3. No publisher, radio broadcast licensee, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to which a false advertisement relates, shall be liable under this section for the dissemination of such false advertisement.

Sec. 23. Minnesota Statutes 1971, Section 31.04, is amended to read:

**31.04 INSPECTION AUTHORITY.** Subdivision 1. For obtaining information regarding suspected violations of law purposes of enforcement of the Minnesota food law, the commissioner, his assistants, inspectors, appointees, or any of his authorized agents and employees, shall have access to all places where any article of food, or other article, the manufacture, sale, use or transportation of which is now or hereafter restricted, regulated, or prohibited 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 public and private hospitals, lumber and railroad camps, inns, boarding and eating houses, drinking places, dining cars, boats, and other places where any of

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these 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 now or hereafter restricted, regulated, or forbidden 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. is authorized upon presenting appropriate credentials to the owner, operator or agent in charge:

(a) To enter at reasonable times any factory, warehouse, or establishment in which food is manufactured, processed, packed or held for introduction into commerce or after such introduction or to enter any vehicle being used to transport or hold such food in commerce;

(b) To inspect at reasonable times and within reasonable limits and in a reasonable manner such factory, warehouse, establishment or vehicle and all pertinent equipment, finished and unfinished materials, containers and labeling therein; and to obtain samples necessary to the enforcement of the Minnesota food law; and;

(c) To have access to and to copy all records of carriers in commerce showing the movement in commerce of any food or the holding thereof during or after such movement, and the quantity, shipper and consignee thereof; provided, that evidence obtained under this clause shall not be used in a criminal prosecution of the person from whom obtained; and provided, further, that carriers shall not be subject to the other provisions of the Minnesota food law by reason of their receipt, carriage, holding, or delivery of food in the usual course of business as carriers.

Subd. 2. Upon completion of any such inspection of a factory, warehouse, or other establishment and prior to leaving the premises, the authorized agent making the inspection shall give to the owner, operator or agent in charge a report in writing setting forth any conditions or practices observed by him which in his judgment indicate that any food in such establishment:

(a) Consists in whole or in part of any filthy, putrid, or decomposed substance, or

(b) Has been prepared, packed or held under insanitary conditions whereby it may have become contaminated with filth or whereby it may have been rendered injurious to health.

A copy of such report shall be sent promptly to the commissioner.

Subd. 3. If the authorized agent making any such inspection of a  
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factory, warehouse or other establishment has obtained any sample in the course of the inspection, upon completion of the inspection and prior to leaving the premises, he shall give to the owner, operator, or agent in charge a receipt describing the samples obtained.

Subd. 4. When in the course of any such inspection of a factory or other establishment where food is manufactured, processed or packed, the officer or employee making the inspection obtains a sample of any such food and an analysis is made of such sample for the purpose of ascertaining whether such food consists in whole or in part of any filthy, putrid or decomposed substance or is otherwise unfit for food, a copy of the result of such analysis shall be furnished promptly to the owner, operator or agent in charge.

Sec. 24. Minnesota Statutes 1971, Chapter 31, is amended by adding a section to read:

**[31.041] REPORTING MINOR VIOLATIONS.** Nothing in the Minnesota food law shall be construed as requiring the commissioner to report minor violations for the institution of proceedings when the commissioner believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning.

Sec. 25. Minnesota Statutes 1971, Section 31.05, is amended to read:

**31.05 EMBARGOES AND CONDEMNATIONS.** The commissioner may seize all food, the manufacture, transportation, sale, or use of which is now or hereafter prohibited by law, 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 law, or in violation of any rule, regulation, definition, standard, or ruling made thereunder, in the manner provided by law, and for this purpose he and his several assistants, inspectors, agents, and employees 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 purposes of this section.  
Subdivision 1. Whenever a duly authorized agent of the commissioner finds or has probable cause to believe that any food or consumer commodity is adulterated or so misbranded as to be dangerous or fraudulent, or is in violation of section 34 he shall affix to such article a tag or other appropriate marking giving notice that such article is, or is suspected of being, adulterated or misbranded and has been detained or embargoed, and warning all persons not to remove or dispose of such article by sale or otherwise until permission for removal or disposal is given by such agent or the court. It shall be unlawful for any person to remove or dispose of such detained or embargoed article by sale or otherwise without such permission.

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Subd. 2. When an article detained or embargoed under subdivision 1 has been found by such agent to be adulterated, or misbranded, the agent shall petition the district court in the county in which the article is detained or embargoed for an order and decree for the condemnation of such article. When such agent has found that an article so detained or embargoed is not adulterated or misbranded, he shall remove the tag or other marking.

Subd. 3. If the court finds that a detained or embargoed article is adulterated or misbranded, such article shall, after entry of the decree, be destroyed at the expense of the claimant thereof, under the supervision of such agent, and all court costs and fees, and storage and other proper expenses, shall be taxed against the claimant of such article or his agent; provided, that when the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court, after entry of the decree and after such costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that such article shall be so labeled or processed, has been executed, may by order direct that such article be delivered to claimant thereof for such labeling or processing under the supervision of an agent of the commissioner. The expense of such supervision shall be paid by claimant. The article shall be returned to the claimant and the bond shall be discharged on the representation to the court by the commissioner that the article is no longer in violation and that the expenses of such supervision have been paid.

Subd. 4. Whenever the commissioner or any of his authorized agents shall find in any room, building, vehicle of transportation or other structure, any meat, seafood, poultry, vegetable, fruit or other perishable articles of food which are unsound, or contain any filthy, decomposed or putrid substance, or that may be poisonous or deleterious to health or otherwise unsafe, the same being hereby declared to be a nuisance, the commissioner, or his authorized agent, shall forthwith condemn or destroy the same, or in any other manner render the same unsalable as human food, and no one shall have any cause of action against the commissioner or his authorized agent on account of such action.

Sec. 26. Minnesota Statutes 1971, Chapter 31, is amended by adding a section to read:

**[31.101] REGULATIONS; HEARINGS; UNIFORMITY WITH FEDERAL LAW.** Subdivision 1. The authority to promulgate and amend regulations for the efficient administration and enforcement of the Minnesota food law is vested in the commissioner and is in addition to authority granted in sections 31.10, 31.11, and 31.12. Such regulations when applicable shall conform, insofar as practicable and consistent with state law, with those promulgated under the federal law.

Subd. 2. Hearings authorized or required by law shall be conducted by the commissioner or such officer, agent, or employee as

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the commissioner may designate for the purpose.

Subd. 3. Federal pesticide chemical regulations and amendments thereto in effect on April 1, 1974 adopted under authority of the federal act are the pesticide chemical regulations in this state. Such regulations may be amended by the commissioner proceeding in accordance with the administrative procedure act.

Subd. 4. Federal food additive regulations and amendments thereto in effect on April 1, 1974 adopted under authority of the federal act are the food additive regulations in this state. Such regulations may be amended by the commissioner proceeding in accordance with the administrative procedure act.

Subd. 5. Federal color additive regulations and amendments thereto in effect on April 1, 1974 adopted under authority of the federal act are the color additive regulations in this state. Such regulations may be amended by the commissioner proceeding in accordance with the administrative procedure act.

Subd. 6. Federal special dietary use regulations and amendments thereto in effect on April 1, 1974 adopted under authority of the federal act are the special dietary use regulations in this state. Such regulations may be amended by the commissioner proceeding in accordance with the administrative procedure act.

Subd. 7. Federal regulations and amendments thereto in effect on April 1, 1974 adopted under the fair packaging and labeling act, Title 15, U.S.C. Sections 1451 to 1461, are the regulations in this state. Such regulations may be amended by the commissioner proceeding in accordance with the administrative procedure act; provided that the commissioner shall not adopt amendments to such regulations or adopt other regulations which are contrary to the labeling requirements for the net quantity of contents required pursuant to section 4 of the fair packaging and labeling act and the regulations promulgated thereunder.

Sec. 27. Minnesota Statutes 1971, Chapter 31, is amended by adding a section to read:

**[31.102] DEFINITIONS, STANDARDS OF IDENTITY; TEMPORARY PERMITS.** Subdivision 1. Federal definitions and standards of identity, quality and fill of container and amendments thereto, in effect on April 1, 1974 adopted under authority of the federal act, are the definitions and standards of identity, quality and fill of container in this state. Such regulations may be amended by the commissioner proceeding in accordance with the administrative procedure act.

Subd. 2. The commissioner may issue temporary permits for intrastate shipment of experimental packs of food. Such permits shall specify the conditions and terms of shipment, and the conditions may

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be at variance from the requirements of the regulations relating to definitions and standards of identity as provided for in subdivision 1 when necessary to the completion or conclusiveness of an otherwise adequate investigation and where the interests of consumers are safeguarded. Regulations relating to the issuance of such permits may be promulgated by the commissioner.

Sec. 28. Minnesota Statutes 1971, Chapter 31, is amended by adding a section to read:

**[31.103] FAIR PACKAGING AND LABELING PROVISIONS.**

Subdivision 1. All labels of consumer commodities shall conform with the requirements for the declaration of net quantity of contents of section 4 of the fair packaging and labeling act (15 U.S.C. 1451, et seq.) and federal regulations in effect on April 1, 1974 promulgated pursuant thereto, except to the extent that the commissioner shall exercise his authority to amend such regulations. Consumer commodities exempted from the requirements of section 4 of the fair packaging and labeling act shall also be exempt from this subdivision.

Subd. 2. The label of any package of a consumer commodity which bears a representation as to the number of servings of such commodity contained in such package shall bear a statement of the net quantity (in terms of weight, measure, or numerical count) of each such serving.

Subd. 3. No person shall distribute or cause to be distributed in commerce any packaged consumer commodity if any qualifying words or phrases appear in conjunction with the separate statement of net quantity of contents required by subdivision 1, but nothing in this section shall prohibit supplemental statements, at other places on the package, describing in nondeceptive terms the net quantity of contents; provided, that such supplemental statements of net quantity of contents shall not include any term qualifying a unit of weight, measure, or count that tends to exaggerate the amount of the commodity contained in the package.

Subd. 4. Whenever the commissioner determines that regulations containing prohibitions or requirements other than those prescribed by subdivision 1, are necessary to prevent the deception of consumers or to facilitate value comparisons as to any consumer commodity, the commissioner shall promulgate, with respect to that commodity, regulations effective to:

(a) Establish and define standards for the characterization of the size of a package enclosing any consumer commodity, which may be used to supplement the label statement of net quantity of contents of packages containing such commodity, but this paragraph shall not be construed as authorizing any limitation on the size, shape, weight, dimensions, or number of packages which may be used to enclose any commodity;

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(b) Regulate the placement upon any package containing any commodity, or upon any label affixed to such commodity, of any printed matter stating or representing by implication that such commodity is offered for retail sale at a price lower than the ordinary and customary retail sale price or that a retail sale price advantage is accorded to purchasers thereof by reason of the size of that package or the quantity of its contents;

(c) Require that the label on each package of a consumer commodity bear the common or usual name of such consumer commodity, if any, and, in case such consumer commodity consists of two or more ingredients, the common or usual name of each such ingredient listed in order of decreasing predominance, but nothing in this clause shall be deemed to require that any trade secret be divulged; or

(d) Prevent the nonfunctional slack-fill of packages containing consumer commodities.

For the purposes of clause (d), a package shall be deemed to be nonfunctionally slack-filled if it is filled to substantially less than its capacity for reasons other than protection of the contents of such package or the requirements of machines used for enclosing the contents in such package.

Sec. 29. Minnesota Statutes 1971, Chapter 3l, is amended by adding a section to read:

**[31.104] FOOD LABELING EXEMPTION REGULATIONS.** The commissioner shall promulgate regulations exempting from any labeling requirement food which is, in accordance with the practice of the trade, to be processed, labeled or repacked in substantial quantities at establishments other than those where originally processed or packed, on condition that such food is not adulterated or misbranded upon removal from such processing, labeling or repacking establishment.

Federal regulations in effect on April 1, 1974 adopted under authority of the federal act relating to such exemptions are effective in this state unless the commissioner shall exercise his authority to amend such regulations and he also may promulgate amendments to existing regulations concerning exemptions.

Sec. 30. Minnesota Statutes 1971, Chapter 31, is amended by adding a section to read:

**[31.121] FOOD ADULTERATION.** A food shall be deemed to be adulterated:

(a) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance such food shall not be considered adulterated under this clause if the quantity of such substance in such food does

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not ordinarily render it injurious to health; or

(b) If it bears or contains any added poisonous or added deleterious substance, other than one which is a pesticide chemical in or on a raw agricultural commodity; a food additive; or a color additive, which is unsafe within the meaning of section 31; or

(c) If it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of section 31; or

(d) If it is or it bears or contains any food additive which is unsafe within the meaning of section 31; provided that where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or tolerance prescribed under section 31, and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of such pesticide chemical remaining in or on such processed food shall, notwithstanding the provisions of section 31 and clause (d) of this section, not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice, and the concentration of such residue in the processed food when ready to eat is not greater than the tolerance prescribed for the raw agricultural commodity; or

(e) If it consists in whole or in part of a diseased, contaminated, filthy, putrid, or decomposed substance, or if it is otherwise unfit for food; or

(f) If it has been produced, prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered diseased, unwholesome, or injurious to health; or

(g) If it is in whole or in part the product of a diseased animal or of an animal which has died otherwise than by slaughter, or of an animal that has been fed upon the uncooked offal from a slaughterhouse; or

(h) If its container is composed in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health; or

(i) If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to section 31 or section 409 of the federal act; or

(j) If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or

(k) If any substance has been substituted wholly or in part therefor; or

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(l) If damage or inferiority has been concealed in any manner; or

(m) If any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength or make it appear better or of greater value than it is; or

(n) If it is confectionery, and (1) has partially or completely imbedded therein any nonnutritive object; provided, that this clause shall not apply in the case of any nonnutritive object if in the judgment of the commissioner, as provided by regulations, such object is of practical functional value to the confectionery product and would not render the product injurious or hazardous to health; (2) bears or contains any alcohol, other than alcohol not in excess of one half of one percent by volume derived solely from the use of flavoring extracts; or (3) bears or contains any nonnutritive substance; provided, that this clause shall not apply to a safe nonnutritive substance which is in or on confectionery by reason of its use for some practical functional purpose in the manufacture, packaging, or storing of such confectionery if the use of the substance does not promote deception of the consumer or otherwise result in adulteration or misbranding in violation of any provision of the Minnesota food law; and provided further, that the commissioner may, for the purpose of avoiding or resolving uncertainty as to the application of this clause, issue regulations allowing or prohibiting the use of particular nonnutritive substances; or

(o) If it is or bears or contains any color additive which is unsafe within the meaning of section 31; or

(p) If it is oleomargarine or margarine or butter and any of the raw material used therein consisted in whole or in part of any filthy, putrid, or decomposed substance, or such oleomargarine or margarine or butter is otherwise unfit for food.

Sec. 31. Minnesota Statutes 1971, Chapter 31, is amended by adding a section to read:

**[31.122] FOOD; TOLERANCES FOR ADDED POISONOUS INGREDIENTS.** Any added poisonous or deleterious substance, any food additive, any pesticide chemical in or on a raw agricultural commodity or any color additive, shall with respect to any particular use or intended use be deemed unsafe for the purpose of application of section 30, clause (b) with respect to any food, unless there is in effect a regulation pursuant to section 26 limiting the quantity of such substance, and the use or intended use of such substance conforms to the terms prescribed by such regulation. While such regulations relating to such substance are in effect, a food shall not, by reason of bearing or containing such substance in accordance with the regulations, be considered adulterated within the meaning of section 30, clause (a).

Sec. 32. Minnesota Statutes 1971, Chapter 31, is amended by adding a section to read:

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**[31.123] FOOD MISBRANDING.** A food shall be deemed to be misbranded:

(a) If its labeling is false or misleading in any particular, or if its labeling, whether on the commodity itself, its container or its package, fails to conform with the requirements of this act;

(b) If it is offered for sale under the name of another food;

(c) If it is an imitation of another food for which a definition and standard of identity have been prescribed by regulations as provided by section 31.10 and section 27 of this act; or if it is an imitation of another food that is not subject to clause (g), unless in either case its label bears in type of uniform size and prominence the word "imitation" and immediately thereafter the name of the food imitated;

(d) If its container is so made, formed, or filled as to be misleading;

(e) If in package form, unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor, and (2) an accurate statement of the net quantity of the contents in terms of weight, measure, or numerical count, which statement shall be separately and accurately stated in a uniform location upon the principal display panel of the label; provided, that under this subclause reasonable variations shall be permitted, and exemptions as to small packages shall be established by regulations prescribed by the commissioner;

(f) If any word, statement, or other information required by or under authority of the Minnesota food law to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(g) If it purports to be or is represented as a food for which a definition and standard of identity have been prescribed by regulations as provided by section 31.10 and section 27 of this act, unless (1) it conforms to such definition and standard, and (2) its label bears the name of the food specified in the definition and standard, and, insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food;

(h) If it purports to be or is represented as (1) a food for which a standard of quality has been prescribed by regulations as provided by section 31.10 and section 27 of this act, and its quality falls below such standard unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard, or (2) a

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food for which a standard or standards of fill of container have been prescribed by regulation as provided by section 31.10 and section 27 of this act, and it falls below the standard of fill of container applicable thereto unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard;

(i) If it is not subject to the provisions of clause (g), unless it bears labeling clearly giving (1) the common or usual name of the food, if any there be, and (2) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings, without naming each; provided, that to the extent that compliance with the requirements of this subclause is impractical or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the commissioner;

(j) If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the commissioner determines to be, and by regulations prescribes as, necessary in order to fully inform purchasers as to its value for such uses;

(k) If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact; provided, that to the extent that compliance with the requirements of this clause is impracticable, exemptions shall be established by regulations promulgated by the commissioner. The provisions of this clause and clauses (g) and (i) with respect to artificial coloring do not apply to butter, cheese or ice cream. The provisions with respect to chemical preservatives do not apply to a pesticide chemical when used in or on a raw agricultural commodity which is the product of the soil;

(l) If it is a raw agricultural commodity which is the product of the soil, bearing or containing a pesticide chemical applied after harvest, unless the shipping container of such commodity bears labeling which declares the presence of such chemical in or on such commodity and the common or usual name and the function of such chemical; provided, however, that no such declaration shall be required while such commodity, having been removed from the shipping container, is being held or displayed for sale at retail out of such container in accordance with the custom of the trade;

(m) If it is a product intended as an ingredient of another food and when used according to the directions of the purveyor will result in the final food product being adulterated or misbranded;

(n) If it is a color additive unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive prescribed under the provisions of the federal act.

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Sec. 33. Minnesota Statutes 1971, Chapter 31, is amended by adding a section to read:

**[31.124] FALSE ADVERTISING.** An advertisement of a food shall be deemed to be false if it is false or misleading in any particular.

Sec. 34. Minnesota Statutes 1971, Chapter 31, is amended by adding a section to read:

**[31.131] EMERGENCY PERMIT CONTROL.** Subdivision 1. Whenever the commissioner finds after investigation that the distribution in the state of Minnesota of any class of food may, by reason of contamination with microorganisms during manufacture, processing, or packing thereof in any locality, be injurious to health, and that such injurious nature cannot be adequately determined after such articles have entered commerce, he then, and in such case only, shall promulgate regulations providing for the issuance, to manufacturers, processors, or packers of such class of food in such locality, of permits to which shall be attached such conditions governing the manufacture, processing, or packaging, or packing of such class of food, for such temporary period of time as may be necessary to protect the public health; and after the effective date of such regulations, and during such temporary period, no person shall introduce or deliver for introduction into commerce any such food manufactured, processed, or packed by any such manufacturer, processor, or packer unless such manufacturer, processor, or packer holds a permit issued by the commissioner as provided by such regulations.

Subd. 2. The commissioner is authorized to suspend immediately upon notice any permit issued under authority of this section if it is found that any of the conditions of the permit have been violated. The holder of a permit so suspended may at any time apply for the reinstatement of such permit, and the commissioner shall, immediately after prompt hearing and inspection of the establishment, reinstate such permit or issue an amended permit if it is found that adequate measures have been taken to comply with and maintain the conditions of the permit, as originally issued, or as amended.

Subd. 3. Any officer or employee duly designated by the commissioner shall have access to any factory or establishment, the operator of which holds a permit from the commissioner, for the purpose of ascertaining whether or not the conditions of the permit are being complied with, and denial of access for such inspection shall be ground for suspension of the permit until such access is freely given by the operator.

Sec. 35. Minnesota Statutes 1971, Chapter 31, is amended by adding a section to read:

**[31.132] PUBLICITY.** Subdivision 1. The commissioner may cause to be published from time to time reports summarizing all judg-

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ments, decrees, and court orders which have been rendered under the Minnesota food law, including the nature of the charge and the disposition thereof.

Subd. 2. The commissioner may also disseminate such substantiated information regarding food as he deems necessary in the interest of public health and the protection of the consumer against fraud. Nothing in this section shall be construed to prohibit the commissioner from collecting, reporting, and illustrating the results of the investigations of the commissioner.

Sec. 36. Minnesota Statutes 1971, Section 31.14, is amended to read:

31.14 DUTY TO PROSECUTE. It shall be the duty of every prosecuting officer each county attorney, or city attorney to whom the commissioner shall report reports any violation of laws now or hereafter enacted relating to food the Minnesota food law, to cause appropriate proceedings to be commenced and prosecuted instituted in the proper courts ; without delay ; for the enforcement of the penalties as in such case therein provided. and to be prosecuted in the manner required by law. Before any violation of the Minnesota food law is reported to any such attorney for the institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given appropriate notice and an opportunity to present his views before the commissioner or his designated agent, either orally or in writing, in person, or by attorney, with regard to such contemplated proceeding.

Sec. 37. Minnesota Statutes 1971, Section 32.021, Subdivision 2, is amended to read:

Subd. 2. For the purpose of enforcing the provisions of chapter 32 and amendatory acts the commissioner, his assistants, agents, and employees, shall have the power and authority granted under the provisions of sections 31.02 to ~~31.16~~ 31.171 .

Sec. 38. REPEALER. Minnesota Statutes 1971, Section 31.01, Subdivisions 5 and 19 are repealed.

Sec. 39. EFFECTIVE DATE. This act takes effect the day following its final enactment.

Approved March 4, 1974.

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