

130278

# 1941 Supplement

To

# Mason's Minnesota Statutes

1927

1939 to 1941

(Supplementing Mason's 1940 Supplement)

Containing the text of the acts of the 1941 Session 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 Law Review Articles and digest of all common law decisions.

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shall have red tags attached to the faucets from which are drawn gasoline and other petroleum products having a flash point of less than 100 degrees Fahrenheit when tested with the Tagliabue closed cup tester.

Subdivision 3. Gasoline and other petroleum products having a flash point of less than 100 degrees Fahrenheit when tested with the Tagliabue closed cup tester shall not be pumped through the same pump or marketing lines as are used for other petroleum products except by special permission of the commissioner.

Subdivision 4. All visible pipes through which are drawn gasoline and other petroleum products having a flash point of less than 100 degrees Fahrenheit when tested with the Tagliabue closed cup tester shall be painted red.

Subdivision 5. No person under 16 years of age shall be employed at gasoline service stations or to deliver gasoline or other volatile and inflammable products.

Subdivision 6. Fuel tanks of motor vehicles shall not be filled while the motor is running nor while any of the occupants or attendants are smoking.

Subdivision 7. Tank wagons and truck transports used in transporting petroleum products shall be identified with the name or recognized trade-mark of the company transporting petroleum products. The name or names shall be painted on the vehicle or tank with letters six inches in height or larger.

Subdivision 8. No gasoline shall be unloaded by any person from truck transports between the hours of 9:00 P. M. and 5:30 A. M. except by special permission of the commissioner.

Subdivision 9. Gasoline shall conform to the specifications by which it is offered for sale or sold.

Subdivision 10. Charging a higher price for gasoline drawn from one pump than from another at the same place shall be prima facie evidence that the higher priced product is a better quality gasoline for the purpose for which it is to be used. (Act Apr. 28, 1941, c. 495, §20.)

**3877-45. Certain blending prohibited.**—The blending of gasoline on which the tax has been paid or the liability assessed therefor with any substance on which the tax has not been paid or the liability assessed therefor is prohibited. (Act Apr. 28, 1941, c. 495, §21.)

**3877-46. State officer or employee engaging in business as a distributor or dealer, prohibited.**—Any officer or employee of the state of Minnesota charged with the enforcement of any provision of this act who is employed by or who engages in business as a distributor or dealer in petroleum products shall be guilty of a misdemeanor. (Act Apr. 28, 1941, c. 495, §22.)

**3877-47. Failure to comply with act.**—Any person who fails to comply with any provisions of this act shall be guilty of a misdemeanor unless other penalties are expressly provided. (Act Apr. 28, 1941, c. 495, §23.)

**3877-48. Action for recovery of a penalty not a bar to action for recovery of another.**—No action or suit for recovery of one penalty shall be a bar to or affect the recovery of any other penalty or be a bar to any criminal prosecution against any licensee or any other person under the provisions of this act. (Act Apr. 28, 1941, c. 495, §24.)

**3877-49. Commissioner to make rules and regulations.**—The commissioner may make rules and regulations relating to the administration and enforcement of this act and other laws regulating the sale, distribution and use of petroleum products. The rules and regulations shall be reasonable and not inconsistent with the law. They shall become effective from their publication by posting and keeping posted a copy thereof on a bulletin board in the office of the commissioner, and by the mailing of a copy to all licensed distributors. Rules and regulations heretofore issued and in force shall continue until amended or revoked. (Act Apr. 28, 1941, c. 495, §25.)

**3877-50. Repealer—Certain provisions subject to this act.**—Mason's Supplement 1940, Sections 2720-70, 2720-71½, 2720-72, 2720-74, 2720-75, 2720-78, 2720-79, 2720-79½, 2720-81, 2720-86, 2720-87, 2720-88, 2720-89, 2720-90, 2720-91, 3773, 3787-1 to 3787-21, 10536-17 and 10536-18, and Mason's Minnesota Statutes of 1927, Sections 2720-76, 2720-77, 2720-80, 2720-82, 2720-84, 2720-85 and 10249 are hereby expressly repealed. The tax imposed by Mason's Supplement 1940, Section 2720-71, as amended, shall be paid by the person and collected in the manner prescribed herein. (Act Apr. 28, 1941, c. 495, §26.)

Sec. 27, Act Apr. 28, 1941, c. 495, provides that the act shall take effect Sept. 1, 1941.

## CHAPTER 21

### Inspection of Food and Other Articles

#### **3810. Disposition of receipts.**

Fines collected under this section should be paid to state treasurer. Op. Atty. Gen. (135a-4), Nov. 26, 1940.

#### **3813. Milk and cream—Sales licensed.**

Although §3820 gives village authority to pass an ordinance providing for inspection of milk and cream, §3812 prohibits imposition of any license, permit, or inspection fee upon any person who sells or peddles products of farm or garden occupied and cultivated by him. Op. Atty. Gen., (292e), April 4, 1940.

Section prohibits village from charging a farmer, operating a dairy farm and delivering milk in city, a fee for inspection of his dairy herd. Op. Atty. Gen., (292E), May 21, 1940.

#### **3815. Milk and cream sold and purchased by weight, etc.—**

Subdivision 1. 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; provided, that in purchasing whole milk from which the milk fat or cream is to be separated and the skimmed milk

sold or processed separately, the purchaser shall pay for such skimmed milk by weight in addition to the amount paid for milk fat as herein prescribed, computing the skimmed milk at eighty per cent of the weight of the whole milk. 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.

Subdivision 2. 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.

Subdivision 3. 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 milkfat 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 said Standard official method for determining the milkfat 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. (As amended Act Apr. 21, 1941, c. 327, §1.)

### 3820. Local inspection.

Although §3820 gives village authority to pass an ordinance providing for inspection of milk and cream, §3812 prohibits imposition of any license, permit, or inspection fee upon any person who sells or peddles products of farm or garden occupied and cultivated by him. Op. Atty. Gen., (292a), April 4, 1940.

Town board has no authority to license dairy companies or their trucks, where it has no platted portion which would give it additional powers of a village. Op. Atty. Gen., (292c), May 6, 1940.

### 3827-6. Definitions.—

Subdivision 1. For the purpose and within the meaning of Mason's Supplement 1940, Sections 3827-6 to 3827-19 inclusive, the definitions set forth in Subdivisions 2 to 14 shall obtain.

Subdivision 2. "Frozen Foods" means ice cream, frozen custards, ice milk, milk sherbet, fruit ice or ice sherbet, frozen malted milk, as defined in this act.

Subdivision 3. "Milk Products" means pure, clean and wholesome cream, pure milk fat, butter, milk, evaporated milk, skimmed milk, condensed milk, sweetened condensed skimmed milk, dried milk, dried skimmed milk.

Subdivision 4. "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, corn syrup in liquid or dry form, 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 cent by weight of edible gelatin or vegetable stabilizer, not less than 12 per cent by weight of milk fat, and not less than 20 per cent 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.

Subdivision 5. "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 cent of milk fat and not less than 64.5 per cent of total solids and not more than five per cent of moisture.

Subdivision 6. "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, corn syrup in liquid or dry form, 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 cent by weight of edible gelatin or vegetable stabilizer, not less than 12 per cent by weight of milk fat, and not less than 20 per cent 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 12 per cent by weight of milk fat and not less than 20 per cent 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 cent by weight of milk fat or less than 16 per cent 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.

Subdivision 7. "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, corn syrup in liquid or dry form, 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 cent by weight of edible gelatin or vegetable stabilizer, not less than 12 per cent by weight of milk fat, not less than 20 per cent 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.

Subdivision 8. "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, corn syrup in liquid or dry form, 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 cent by weight of edible gelatin or vegetable stabilizer, not less than two per cent and not more than 12 per cent by weight of milk fat, and not less than 14 per cent 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.

Subdivision 9. "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, corn syrup in liquid or dry form, and honey with fruit or fruit juice flavoring and coloring, with not less than four-tenths of one per cent 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 cent by weight of milk fat and not less than four per cent by weight of milk solids and weighs not less than five and one-half pounds per gallon.

Subdivision 10. "Fruit Ice or Ice Sherbet" means the pure, clean, frozen product made from water, sugar, dextrose, corn syrup in liquid or dry form, and honey with fruit or fruit juice flavoring and coloring, with not less than four-tenths of one per cent 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.

Subdivision 11. "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, corn syrup in liquid or dry form, 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 cent by weight of edible gelatin or vegetable stabilizer, not less than seven per cent by weight of milk fat, not less than 14 per cent

by weight of total milk solids, and not less than three per cent 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.

Subdivision 12. "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.

Subdivision 13. "Person" means any individual, partnership, corporation, or association.

Subdivision 14. "Manufacture" means processing and/or freezing. (As amended Act Mar. 13, 1941, c. 62, §1.)

### 3835. Commercial canneries; etc.

Purchase of fruits and vegetables for use in commercial canneries. Laws 1941, c. 398.

**3844-1. Commercial canneries—Definitions.**—The following terms whenever 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) "Person" shall mean any individual, firm, co-partnership, corporation or association.

(c) "Commercial cannery" shall mean a place or building 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.

(d) "Producer" shall mean a person engaged in the growing of fruits or vegetables for use in a commercial cannery.

(e) The terms "buy," "purchase" and "sell" shall include production pursuant to a contract or agreement by the terms of which a person undertakes, for a consideration, to grow fruits or vegetables owned by another person.

(f) The compensation payable to any person under a contract or agreement by the terms of which such person undertakes, for a consideration, to grow fruits or vegetables owned by another person, shall be deemed to be the sale price of such fruits or vegetables. (Act Apr. 24, 1941, c. 398, §1.)

**3844-2. Purchase of fruits and vegetables for use in—Licenses—Bonds.**—On and after April 1, 1941, no person shall buy from producers fruits or vegetables for use in a commercial cannery unless licensed by the commissioner so to do in the manner set forth in this Act. Application upon a form prescribed by the commissioner shall be made on or before March 1 in each year for the license year beginning April 1 following. The applicant shall satisfy the Commissioner of his financial responsibility in seeking to buy fruits or vegetables for use in a commercial cannery in this state. Any applicant who shall file with the commissioner a certificate under oath setting forth that the applicant has been engaged in the business of buying fruits or vegetables for use in a commercial cannery for a period of at least one year in the State of Minnesota, and that all producers from whom he has purchased fruits or vegetables except those whose accounts are in bona fide dispute or in litigation have been paid in full therefor or in lieu of such statement, shall file with the commissioner a bond with sureties approved by the commissioner in the amount of the sum of the unpaid growers accounts of the applicant for the preceding season, conditioned for the payment of such unpaid growers' accounts within a reasonable time thereafter shall, for the purposes of this Act, be

deemed to be financially responsible. The Commissioner, if so satisfied, shall issue to such applicant, on payment of \$10.00, a license entitling the applicant to buy fruits and vegetables for use in a commercial cannery until the 1st day of April next following. The license shall designate the location of the commercial cannery or canneries where such fruits and vegetables are to be used. The commissioner, if not satisfied with applicant's financial responsibility as in this Section provided, shall require the licensee to file with such application a good and sufficient bond drawn and executed according to the provisions of Section 3 of this Act. (Act Apr. 24, 1941, c. 398, §2.)

**3844-3. Same—Bonds of purchasers.**—The bond required by Section 2 shall be upon a form prescribed by the commissioner and shall be in such amounts as the commissioner may fix and determine; shall be executed by sureties to be approved by the commissioner and shall be conditioned for the faithful compliance by the licensee with the provisions of this Act and for the prompt payment of all amounts due to producers of fruits or vegetables sold by them to such licensee during the license year. The bond shall be approved by the commissioner. Upon default by the licensee in any of the conditions of the bond, if there is reason to believe that the licensee owes for the purchase of fruits or vegetables from the producers, the commissioner shall give reasonable notice for all such producers to file verified claims and may, if he deems it advisable, fix a limit of the time within which such claims must be filed. The commissioner shall examine claims filed and by certificate determine the amounts due upon them. The commissioner may bring an action upon the bond and for the purposes of such action the certificate determining the amounts due shall be presumptive evidence of the facts therein stated. If the recovery upon the bond is not sufficient to pay all claims as finally determined, then it shall be divided pro rata among them. No suit or action against a surety on any such bond shall be brought later than two years from the accrual of the cause of action thereon. (Act Apr. 24, 1941, c. 398, §3.)

**3844-4. Licensees to keep records.**—Every person applying for or holding a license under this Act shall keep accurate records of transactions of the purchase of fruits or vegetables by him for use in a commercial cannery and of the payment or nonpayment therefor, and the commissioner shall have access to such records at all reasonable times. (Act Apr. 24, 1941, c. 398, §4.)

**3844-5. Investigation of records.**—The commissioner shall have power to investigate the records required to be kept under the provisions of this Act. (Act Apr. 24, 1941, c. 398, §5.)

**3844-6. Revocation of licenses.**—The commissioner may revoke a license already granted when he is satisfied that such license was granted upon fraudulent representations of applicant. (Act Apr. 24, 1941, c. 398, §6.)

**3844-7. Same—Notice and hearing.**—The commissioner, before revoking or determining to revoke any license issued under the provisions of this Act, shall give the licensee ten days' notice, personally or by mail, of the time and place of a hearing to determine whether such license shall be revoked. At such hearing the commissioner shall receive evidence and hear the licensee and shall thereafter file an order either dismissing the proceeding or revoking such license. (Act Apr. 24, 1941, c. 398, §7.)

**3844-8. Same—Review of order.**—The action of the commissioner in refusing to grant a license or in revoking a license shall be subject to review by writ of certiorari. (Act Apr. 24, 1941, c. 398, §8.)

**3844-9. Violations of act.**—Any person subject to the provisions of this Act who shall violate any of the

provisions thereof shall be guilty of a misdemeanor. (Act Apr. 24, 1941, c. 398, §9.)

**3861. Civil service—Office of dairy and food commissioner. [Repealed.]**

Repealed. Laws 1939, c. 441, §43.  
If deputy oil inspector discharged before Civil Service Act went into effect had a civil service status under existing statute, such status was abolished by going into effect of such act and mandamus would not lie to enforce such right, though petition was filed and alternative writ was issued prior to effective date. *Reed v. T.*, 296NW 535.

MISCELLANEOUS  
ANIMAL FEED

**3875. Statement to be affixed to packages and samples.**

Seller cannot legally omit inspection tags or stickers because sale is made to state for use of its institutions, and state may not waive such requirements. *Op. Atty. Gen.* (135B-5), Nov. 27, 1940.

**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; ceraline 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, cotton-seed 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, canned and dry dog foods, 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. (As amended Act Apr. 21, 1941, c. 354, §1.)

**3887. Sale of screenings prohibited—Exception.**—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. (As amended Act Apr. 24, 1941, c. 416, §1.)

BARBITAL

**3906-14. Prescriptions—Refills.**

Prescriptions for barbital which have been typewritten but signed by doctor comply with law. *Op. Atty. Gen.*, (337c-3), Jan. 29, 1940.

EGGS AND EGG PRODUCTS

**3935-17. License fees and fines to be credited; etc.** Commissioner of Agriculture may enter into a cooperative agreement with United States Department of Agriculture whereby inspectors of state department are licensed by United States department to inspect and grade and issue federal, or federal-state grading certificates, though fees covering grading certificates are collected and paid directly into federal treasury, which in turn refunds state portion of grading fees to state treasury, subject to approval of the attorney general. *Op. Atty. Gen.* (136), Sept. 5, 1940.

POTATOES

**3945-18e. Potatoes to be inspected—Fees assessed against shipper.**—That all potatoes shipped by any person in carload lots from the state of Minnesota shall be inspected by an authorized federal state ins-

pector to determine the grade, quality and condition of such shipments. All fees shall be assessed against the firm or individual that bills the shipment. Provided, however, that this act shall not apply to Minnesota grown potatoes between July 1 and October 1 of each year. (As amended Act Apr. 17, 1941, c. 292, §1.)

**3945-24. Grading of apples.**—The commissioner of agriculture shall annually, after due notice and public hearing of all parties affected, fix and promulgate official standards for grading and classifying all apples offered for sale in Minnesota; provided, that such grades and classes shall not conflict with any such grades or standards promulgated by the United States department of agriculture, except as producer and marketing conditions in Minnesota shall require the establishment of fewer grades than the United States department of agriculture grades. (Act Apr. 22, 1941, c. 371, §1.)

**3945-25. Marking.**—All apples offered for sale and each closed package of apples offered or exposed or packed for sale shall be plainly and conspicuously marked with a sign bearing the name and address of the grower or packer, the name of the variety, the minimum size and the grade, except that apples not in closed packages, offered for sale at retail, may be marked with a sign bearing only the name of the variety and the grade. All apples which fail to meet the requirements of any of the established Minnesota grades shall be plainly and conspicuously marked with a sign bearing the word "culls" in well proportioned letters, at least two inches in height, except that on closed packages of cull apples the sign bearing the word "culls" may be three-quarter inch in height and shall be placed on the top and side of each package. The commissioner shall exempt from the provisions of this act apples which are marked with and meet the requirements of grades of the United States department of agriculture, or well established grades promulgated by other states meeting the Minnesota requirements. (Act Apr. 22, 1941, c. 371, §2.)

**3945-26. Power to enforce—Inspection.**—The commissioner shall be charged with the enforcement of the provisions of this act and for that purpose shall have the power:

(a) To enter and inspect personally, or through any authorized representative, any place within the state of Minnesota where apples are sold, offered or exposed or packed for sale, and to inspect such places and all apples and apple containers found in any such place.

(b) To make, publish and enforce such uniform rules and regulations as are necessary for carrying out the provisions of this act. (Act Apr. 22, 1941, c. 371, §3.)

**3945-27. Act is severable.**—If any clause, sentence or section of this act shall for any reason be adjudged by a court of competent jurisdiction to be unconstitutional or void, such decision shall not affect the validity of the remaining portion of this act but shall be confined in its operation to the section or sentence or clause of this act thereof directly involved in the controversy in which such decision shall have taken place. (Act Apr. 22, 1941, c. 371, §4.)

**3945-28. Not applicable to local grower or producer.**—Provided however that this act shall not apply to any grower or producer when selling apples of his own production grown in Minnesota. (Act Apr. 22, 1941, c. 371, §5.)

**3945-29. Violation, penalties.**—Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor. In addition, any apples found to be offered or exposed or packed for sale in violation of this section may be ordered temporarily withdrawn from sale by the commissioner, pending either (a) informal adjustment according to law between the commissioner or his duly authorized repre-

sentative, and the person in charge of the apples in question, or (b) by the filing of a formal complaint, without undue delay, with the attorney general or prosecuting attorney. (Act Apr. 22, 1941, c. 371, §6.)

Sec. 7, Act Apr. 22, 1941, c. 371, provides that the act shall be in effect from June 1, 1941.

#### AGRICULTURAL SEEDS

**3957-2. Powers of commissioner of agriculture, etc.** Inspection of agricultural seeds. Laws 1941, c. 472.

**3957-3. Labels for packages—Contents—Weed seed tolerance.—**

Subd. 1. \* \* \* \* \*

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 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 contain ten or more seeds of (euphorbie esule), perennial pepper grass (lepidium draba), horse nettle (solanum carolinense), or australian field cress (roripa or radícula austriaca).

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

(3) Such agricultural seed shall contain any seeds of creeping jennie (convolvulus arvensis L.), or leafy spurge (euphorbia esula).

(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.

(5) Any person engaged in the purchase and sale of agricultural seeds who comes into possession of seeds or samples of seeds containing seeds of creeping jennie or leafy spurge shall report to the state department of agriculture the name and address of the person from whom such seeds or seed samples were received. (As amended Act Mar. 28, 1941, c. 75, §1.)

Use of word "type" in conjunction with name of variety is not prohibited. Op. Atty. Gen., (136E), Jan. 29, 1940.

**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. Effective August 1, 1941, in determining such number of days, the findings of the Minnesota experimental station shall govern. (As amended Act Apr. 16, 1941, c. 280, §1.)

**3957-24. Filing record—Fee—Commissioner of agriculture to enforce act.—**

Subdivision 1. Effective August 1, 1941, a record of each hybrid seed corn variety shall be filed by the originator or owner thereof with the commissioner of agriculture and dairy and food, and for each such filing he shall collect a fee of \$2.00. Annually thereafter he shall issue a renewal of such filing for a fee of \$1.00. Said fees shall be deposited with the state treasury as other departmental receipts are deposited and shall constitute and be a part of the separate account known as the "seed act account" created by Mason's Minnesota Statutes of 1927, Sections 3957-1 to 3957-12, inclusive, as amended.

Subdivision 2. The commissioner of agriculture and dairy and food is hereby charged with the duty and responsibility of enforcing the provisions of this act. (As amended Act Apr. 16, 1941, c. 280, §2.)

**3957-27. Definitions.**—Unless otherwise specifically required in the context of this act, the words and expressions and the definitions herein given shall govern.

(a) The term "agricultural seed" or "agricultural seeds" shall include and mean any and all kinds and varieties of seeds planted and grown in the State of Minnesota for the production of root crops, grains, seeds, forage, hay, for green manure crops and lawns, whether such seeds are regarded singly or as mixtures of the same.

The word "commissioner" shall refer to and mean the commissioner of agriculture, dairy and food department of the State of Minnesota.

The word "vendor" shall be construed to mean any person who sells, offers or exposes agricultural seeds for sale not grown on his own farm.

The word "cereals" shall mean and include seeds of wheat, oats, barley, speltz or emmer and buckwheat.

The word "retail" shall mean and refer to the sale of agricultural seeds in small quantities and when sold to a farmer or person who shall use seed for sowing or planting.

The word "wholesale" shall mean and refer to the sale of agricultural seeds in large quantities to vendors for resale and/or to persons for the purpose of cleaning, grading and processing, but not to a farmer or person who uses or causes such seed to be used for sowing and planting.

The words "sell", "person", "approximate", "germination", "kinds", "pure seed", "mixtures", "screenings", etc., shall refer to and mean such definitions as given in Section 1, chapter 387, session laws of 1927, commonly known and referred to as the Pure Seeds Act. (Act Apr. 26, 1941, c. 472, §1.)

**3957-28. Inspection—Fees and charges.**—(a). For the purposes of defraying the costs of inspection of agricultural seeds in this state, the commissioner shall furnish tags or labels in forms and characters as shall be adequate for the purposes and in the manner hereinafter described.

(b). It shall be the duty of every vendor or person selling, offering or exposing agricultural seed, except cereals, for sale at retail in Minnesota to have attached to the containers a tag or label prescribed and prepared by the commissioner and sold to the vendor at the prices described in Section 2 (c).

The following described tags shall be used for pure or unmixed seeds other than cereals:

Yellow tags for seeds of alfalfa, sweet clover, red clover, alsike clover, white clover, lespedeza and other legume seeds of similar size, timothy, bromus, rye grass, orchard grass, reed canary grass, blue grasses, fescues, red top, rape, bent grass and wheat grass.

Green tags for flax, millets, proso, sorghum or cane, kafir corn, milo maize, mangold, hemp, sudan grass and vetches.

Brown tags for field and canning peas, navy and/or white beans, and sunflowers.

The following described tags shall be used for mixtures and special mixtures of seeds other than cereals.

White tags for any and all mixtures of seeds of the foregoing groups in this section when two or more kinds, and/or varieties are intermingled in proportions of five per cent or more by weight of each.

(c). The prices to be paid by vendors for the tags or labels shall be at the following rates:

100 to 150-pound containers—	5 cents each.
60 to 99-pound containers—	4 cents each.
30 to 59-pound containers—	3 cents each.
15 to 29-pound containers—	2 cents each.
1 to 14-pound containers—	1 cent each.

(d). Vendors of agricultural seeds shall be required to attach one tag or label herein designated to each container described herein for seed sold, offered or exposed for sale.

(e). The commissioner of agriculture, dairy and food is hereby authorized and it shall be his duty to administer and enforce this act and to that end he may promulgate and enforce such regulations as in his judgment shall be necessary; he shall investigate the sale, transportation, distribution and adaptation of agricultural seeds in Minnesota as provided by the Pure Seeds Act, Chapter 387, Session Laws of 1927, and subsequently amended and as hereinafter provided. He shall employ such agents and assistants as are necessary to execute the requirements of this act, none of whom, except those who are employed on a regular or full-time basis, shall come within or be governed by the provisions of the act creating the Department of Civil Service or any amendments thereof, and fix their compensation. He shall have the authority to publish information, records, etc., relative to the administration and records pertaining to the work performed under this act.

(f). All fees and moneys collected from the sale of tags or labels herein referred to shall be deposited in the state treasury as other departmental receipts are deposited and shall be credited to and become a part of the "Seed Act Account," created by Section 2(a) Chapter 387, Session Laws of 1927, for the pur-

pose of defraying the expenses of administering and enforcing of this act. (Act Apr. 26, 1941, c. 472, §2.)

**3957-29. Effective date of act.**—The enforcement of this act shall become effective on and after August 1st, 1941, and for the purpose of the preparation of tags or labels here provided for and for other matters in connection with the administration and execution of this act the commissioner is hereby authorized to use up to One Thousand Dollars from another fund in the same division, that is, the Division of Weeds and Seeds, that shall be replaced as soon as the fund is made available from the passage of this act. (Act Apr. 26, 1941, c. 472, §3.)

**3957-30. Addition to pure seeds act.**—Nothing in this act shall in any manner affect, change, modify or amend the purpose, meaning and enforcement of the Pure Seeds Act, Chapter 387, Session Laws of 1927 and subsequently amended, but shall be in addition thereto. (Act Apr. 26, 1941, c. 472, §4.)

#### SOFT DRINKS AND OTHER NON-ALCOHOLIC BEVERAGES

**3965-20. Same—Licensee shall not display federal retail tax stamp—Violation a misdemeanor.**

Permit to drug store in dry territory to sell liquor on prescription is authorized, and does not prevent issuance of 3.2 beer license. Op. Atty. Gen., (218J-3), Sept. 28, 1939.

### CHAPTER 21A

## Regulation of Manufactures and Sales

#### SALE OF FIREWORKS

**3976-17a. Definition of term "fireworks."**—As used in this act the term "fireworks" means any substance or combination of substances or article prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration or detonation, and includes blank cartridges, toy cannons, and toy canes in which explosives are used, the type of balloons which require fire underneath to propel them, firecrackers, torpedoes, sky rockets, roman candles, daygo bombs, sparklers, or other fireworks of like construction and any fireworks containing any explosive or inflammable compound, or any tablets or other device containing any explosive substance and commonly used as fireworks. The term "fireworks" shall not include toy pistols, toy guns, in which paper caps containing 25 hundredths grains or less of explosive compound are used and toy pistol caps which contain less than 20 hundredths grains of explosive mixture. (Act Apr. 8, 1941, c. 125, §1.)

**3976-17b. Sale or use prohibited.**—Except as otherwise provided in this act, it shall be unlawful for any person to offer for sale, expose for sale, sell at retail, or use or explode any fireworks. (Act Apr. 8, 1941, c. 125, §2.)

**3976-17c. Display—Permits.**—This act shall not prohibit supervised public displays of fireworks by cities, villages, and boroughs, fair associations, amusement parks, and other organizations. Except when such display is given by a municipality or fair association within its own limits, no display shall be given unless a permit therefor has first been secured. Every application for such a permit shall be made in writing to the municipal clerk at least 15 days in advance of the date of the display. The application shall be promptly referred to the chief of the fire department who shall make an investigation to determine whether the operator of the display is competent and whether the display is of such a character and is to be so located, discharged or fired that it will not be hazardous to property or endanger any

person. The fire chief shall report the results of this investigation to the clerk and if he reports that in his opinion the operator is competent and that the display as planned will conform to safety requirements, including the rules and regulations of the state fire marshal hereinafter provided for, the clerk shall issue a permit for the display when the applicant pays a permit fee of two dollars. When the supervised public display for which a permit is sought to be held outside the limits of an incorporated municipality, the application shall be made to the county auditor and the duties imposed by this act upon the clerk of the municipality shall be performed in such case by the county auditor. The duties imposed on the fire chief of the municipality by this act shall be performed in such case by the county sheriff. After such permit shall have been granted, sales, possession, use and distribution of fireworks for such display shall be lawful for that purpose only. No permit granted hereunder shall be transferable. The state fire marshal shall adopt reasonable rules and regulations not inconsistent with the provisions of this act to insure that fireworks displays are given safely. (Act Apr. 8, 1941, c. 125, §3.)

**3976-17d. Selling at wholesale—Illumination or ceremonial purposes.**—Nothing in this act shall be construed to prohibit any resident wholesaler, dealer, or jobber, from selling at wholesale such fireworks as are not herein prohibited; or the sale of any kind of fireworks for shipment directly out of the state; or the use of fireworks by airplanes and railroads, or other transportation agencies for signal purposes or illumination; or the sale or use of blank cartridges for a show or theatre, or for signal or ceremonial purposes in athletics or sports, or for use by military organizations. (Act Apr. 8, 1941, c. 125, §4.)

**3976-17e. State fire marshal or sheriff to seize all stock.**—The state fire marshal or any sheriff, police officer, constable, or local fire marshal shall seize, take, remove or cause to be removed at the expense of the owner all stocks of fireworks or combustibles of-