

CHAPTER 28A

CONSOLIDATED FOOD LICENSING LAW

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NOTE: Laws 1971, Chapter 339, Section 28, reads in part as follows: "...provided, that all licenses for food processors or manufacturers shall be renewable on January 1, 1972, and annually thereafter, and all licenses for retail and wholesale food handlers shall be renewable on July 1, 1972, and annually thereafter."

28A.01 CITATION, MINNESOTA CONSOLIDATED FOOD LICENSING LAW.

Sections 28A.01 to 28A.16 shall be known as the "Minnesota consolidated food licensing law."

[1971 c 339 s 1]

28A.02 DECLARATION OF POLICY. It is hereby declared to be the policy of the legislature, recognizing that food in its various forms is essential to the health and well-being of the people of this state and that its production, processing, packaging, labeling, handling, distribution and sale may create health hazards, misinform consumers, perpetuate frauds or otherwise jeopardize the public health and welfare and in order to effect an efficient and simple form of licensing, to require that every person who handles food in a manner described herein, shall obtain a license therefor from the commissioner and that all producers, processors, packagers, labelers, handlers, distributors and vendors of food, whether or not subject to licensing, shall be required to comply with all applicable regulations adopted by the commissioner.

[1971 c 339 s 2]

28A.03 DEFINITIONS. As used in sections 28A.01 to 28A.16 the terms defined in this section shall have the following meanings:

(a) "Commissioner" means the commissioner of agriculture of the state of Minnesota.

(b) "Person" means any individual, firm, corporation, company, association, cooperative or partnership and includes any trustee, receiver, assignee or other similar representative thereof.

(c) "Place of business" means every location where food or food items are manufactured, processed, sold, stored or handled, including buildings, locations, permanent or portable structures, carnivals, circuses, fairs, or any other permanent or temporary location.

(1) Any vehicle or similar mobile unit from which food is sold shall be considered a place of business for purposes of this section if the food therefrom has been manufactured, packaged or dispensed from bulk, or processed in any manner thereon.

(2) Each location which is identified by a separate address, at which one or more vending machines which process or dispense food are located shall be considered a separate place of business for the purposes of this section.

(d) "Food" includes every article used for, entering into the consumption of, or used or intended for use in the preparation of food, drink, confectionery, or condiment for man, whether simple, mixed or compound.

(1) "Perishable food" is food which includes, but is not limited to fresh fruits, fresh vegetables, and other products which need protection from extremes of temperatures in order to avoid decomposition by microbial growth or otherwise.

(2) "Readily perishable food" is food or a food ingredient consisting in whole or in part of milk, milk products, eggs, meat, fish, poultry or other food or food ingredient which is capable of supporting rapid and progressive growth of infectious or toxic

genic micro-organisms.

(3) "Frozen food" is food which is processed and preserved by freezing in accordance with good commercial practices and which is intended to be sold in the frozen state.

(4) For the purposes of this definition, packaged food in hermetically sealed containers processed by heat to prevent spoilage; packaged pickles; jellies, jams and condiments in sealed containers; bakery products such as bread, rolls, buns, donuts, fruit-filled pies and pastries; dehydrated packaged food; and dry or packaged food so low in moisture content as to preclude development of micro-organisms are not "perishable food", "readily perishable food", or "frozen food" within the meaning of definitions (1), (2) and (3) herein when they are stored and handled in accordance with good commercial practices.

(e) "Sell and sale" includes the keeping, offering, or exposing for sale, use, transporting, transferring, negotiating, soliciting, or exchange of food, the having in possession with intent to sell, use, transport, negotiate, solicit, or exchange the same and the storing, or carrying thereof in aid of traffic therein whether done or permitted in person or through others.

(f) "Principal mode of business" means that type of business described under either (a), (b), (c) or (d) in section 28A.05 within which category the greatest amount of the applicant's food business lies.

[1971 c 339 s 3; 1975 c 412 s 9]

28A.04 LICENSE REQUIRED; APPLICATIONS; RENEWALS. No person shall engage in the business of manufacturing, processing, selling, handling, or storing food whether at wholesale or retail without having first obtained from the commissioner a license for doing such business. Applications for such license shall be made to the commissioner in such manner and time as required and upon such forms as provided by the commissioner and shall contain the name and address of the applicant, address or description of each place of business, and the nature of the business to be conducted at each place, and such other pertinent information as the commissioner may require.

A retail or wholesale food handler license shall be issued for the period July 1 to June 30 following and shall be renewed thereafter by the licensee on or before July 1 each year. A license for a food broker or for a food processor or manufacturer shall be issued for the period January 1 to December 31 following and shall be renewed thereafter by the licensee on or before January 1 of each year. A penalty for a late renewal shall be assessed in accordance with section 28A.08.

[1971 c 339 s 4; 1975 c 412 s 10]

28A.05 CLASSIFICATION. All persons required to have a license under section 28A.04 shall be classified into one of the following classes of food handlers, according to their principal mode of business.

(a) Retail food handlers are persons who sell or process and sell food directly to the ultimate consumer or who custom process meat or poultry. The term includes a person who sells food directly to the ultimate consumer through the use of coin actuated vending machines, unless excluded by section 28A.15, subdivision 6.

(b) Wholesale food handlers are persons who sell to others for resale. A person who handles food in job lots (jobbers) is included in this classification.

(c) Wholesale food processors or manufacturers are persons who process or manufacture raw materials and other food ingredients into food items, or who reprocess food items, or who package food for sale to others for resale, or who commercially slaughter animals or poultry. Included herein are persons who can, extract, ferment, distill, pickle, bake, freeze, dry, smoke, grind, mix, stuff, pack, bottle, recondition, or otherwise treat or preserve food for sale to others for resale, cold storage warehousemen as defined in section 28.01, subdivision 3, salvage food processors as defined in section 31.495, subdivision 1, dairy plants as defined in section 32.01, subdivision 6, nonresident manufacturers of frozen foods as described in section 32.59, and nonresident manufacturers or distributors of nonalcoholic beverages as described in section 34.05.

(d) A food broker is a person who buys and sells food and who negotiates between a buyer and a seller of food, but who at no time has custody of the food being

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bought and sold.

[1971 c 339 s 5; 1974 c 2 s 1; 1975 c 412 s 11]

28A.06 EXTENT OF LICENSE. No person, except as described in sections 27.03 and 27.04, shall be required to hold more than one license in order to engage in any aspect of food handling described in section 28A.05 provided, that each issued license shall be valid for no more than one place of business, except that a license for a mobile unit or a portable structure is valid statewide and is required to be issued only once each year unless the licensee fails to display the license as required by section 28A.07.

[1971 c 339 s 6]

28A.07 ISSUANCE OF LICENSE. Prior to the issuance or renewal of any license herein, the commissioner may cause appropriate inspections to be made to determine under applicable statutory and promulgated rule requirements, the applicant's fitness to engage in the mode(s) of business described in that person's license application. A valid and properly displayed license shall be sufficient to allow the licensee to engage in the manner of food handling so described in the licensee's application, provided that the commissioner may withhold authorization to engage in any aspects of business for which the applicant is not deemed fit under this section. A licensee may, at any time, apply to change such application which shall then be considered by the commissioner in the same manner as a new or renewal application hereunder.

[1971 c 339 s 7]

28A.08 LICENSE FEES; PENALTIES. The fees for licenses and the penalties for late renewal thereof prescribed herein shall apply to the sections named except as provided under section 28A.09. Except as specified herein, bonds and assessments based on number of units operated or volume handled or processed which are provided for in said laws shall not be affected, nor shall any penalties for late payment of said assessments, nor shall inspection fees, be affected by this chapter.

Type of food handler	License Fee	Penalty
1. Retail food handler		
(a) Having gross sales of less than \$250,000 for the immediately previous license or fiscal year	\$15	\$5
(b) Having \$250,000 to \$1,000,000 gross sales for the immediately previous license or fiscal year	\$30	\$10
(c) Having over \$1,000,000 gross sales for the immediately previous license or fiscal year	\$50	\$15
2. Wholesale food handler	\$30	\$10
3. Food broker	\$15	\$5
4. (a) Wholesale food processor or manufacturer	\$100	\$30
(b) Wholesale food processor of meat or poultry products under supervision of the U.S. Department of Agriculture	\$50	\$15

[1971 c 339 s 8; 1975 c 412 s 12]

28A.09 FEES FOR VENDING MACHINE LOCATIONS. The following combined license fee schedule shall be applied for an applicant's place(s) of business where food is sold and dispensed solely through the use of vending machines, and the fees charged hereunder shall be in lieu of any other fees which may be applied to such place(s) of business under section 28A.08:

(a) \$2 for each of the first 100 such places of business;

(b) \$1 for each such place of business thereafter;

(c) Provided that no applicant shall be required to pay a total of more than \$400 under (a) and (b) above regardless of the number of applicant's places of business

hereunder.

(d) A place of business which consists solely of vending machines dispensing only bottled or canned soft drinks, prepackaged confections, and similar dry, nonperishable items, such as ball gum, nuts, and panned candies, shall not be counted for the purpose of determining applicant's license fees hereunder.

[1971 c 339 s 9]

28A.10 POSTING OF LICENSE; RULES AND REGULATIONS. All such licenses shall be issued for a period of one year and shall be posted or displayed in a conspicuous place at the place of business so licensed. Except as provided in sections 29.22, subdivision 4 and 31.39, all such license fees and penalties collected by the commissioner shall be deposited into the state treasury and credited to the general fund. The commissioner may adopt such rules and regulations in conformity with law as he deems necessary to effectively and efficiently carry out the provisions of sections 28A.01 to 28A.16.

[1971 c 339 s 10]

28A.11 ADJUSTMENTS. The commissioner shall make appropriate license fee adjustments for up to one year from July 1, 1971 for persons required to be licensed hereunder, who hold validly issued licenses as of the date of this act under the provisions of law amended or repealed herein. The commissioner may also make appropriate license fee adjustments for licensees changing their classification under section 28A.05 prior to the expiration date of their current license.

[1971 c 339 s 11]

28A.12 VIOLATIONS. Any person who does not comply with the provisions of sections 28A.01 to 28A.16 or regulations issued thereunder shall be guilty of a misdemeanor.

[1971 c 339 s 12]

28A.13 POWER TO SUSPEND OR REVOKE LICENSES. Whenever the commissioner has reason to believe that any provision of law relating to the manufacturing, processing, distribution, handling and sale of food, or regulation issued by the commissioner thereunder, has been violated, the commissioner may suspend or revoke the license granted under section 28A.05, or may limit the permission of the license to only those aspects of the licensee's business which are in conformity with the law and regulations. Any person may be restrained by injunction from engaging in any business operation or category thereof for which that person is not validly licensed. This suspension or revocation shall be made only after notice to the licensee and an opportunity to be heard with reference to the grounds for suspension or revocation, and this action by the commissioner shall in no way exempt such licensee from the penalties otherwise imposed in this chapter. The commissioner shall serve upon the licensee by registered letter containing a copy thereof, an order to show cause why the license should not be permanently revoked, stating the grounds thereof, and the time and place of hearing, which time shall not be less than ten days after the date of mailing of the order. At the appointed time and place, and at such times as the matter may be adjourned to, the commissioner, or his appointed hearing officer, shall hear all proper evidence relating to the cause of the proposed revocation and, within a reasonable time thereafter, he shall make and file his decision of the matter and forthwith mail to the licensee a copy thereof.

[1971 c 339 s 13]

28A.14 TRANSFER OF BUSINESS. A transfer of a business or a discontinuance of its operation by the licensee at the address covered by the license voids the license and the license certificate shall be surrendered to the commissioner immediately by anyone in possession of the same.

[1971 c 339 s 14]

28A.15 EXCLUSIONS. Subdivision 1. The licensing provisions of sections 28A.01 to 28A.16 shall not apply to the following:

Subd. 2. Persons selling the products of the farm or garden occupied and cultivated by him, or to persons not regularly engaged in the business of manufacturing and selling food and who prepare food only on order of and for sale directly to the ultimate consumer, or to educational, charitable or religious organizations not regularly

engaged in the business of manufacturing, processing, or selling food at their established educational, charitable or religious institutions.

Subd. 3. A farmer slaughtering his own animals, rabbits or poultry, on his own farm for: (a) his own use; or (b) the use of his immediate family.

Subd. 4. Any persons required to be licensed under the provisions of sections 19.01 to 19.40 or trucks operating under a certificate or permit issued pursuant to chapter 221 or warehousemen, other than cold storage warehousemen, offering storage or warehouse facilities for compensation.

Subd. 5. Persons whose principal mode of business is licensed under section 157.03; provided that the holding of any license pursuant to section 157.03 shall not exempt any person from the applicable requirements of the laws and regulations administered by the commissioner, as they relate to composition, standards of identity, adulteration, labeling or misbranding of food.

Subd. 6. Persons selling and dispensing the following foods by the sole use of a vending machine located in a place of business owned and operated by such person: ice manufactured and packaged by another, bottled or canned soft drinks, prepackaged confections, and similar dry, nonperishable items such as ball gum, nuts, and panned candies.

Subd. 7. Persons whose principal business is not food handling but who sell only ice manufactured and prepackaged by another or such nonperishable items as bottled or canned soft drinks and prepackaged confections at retail, or persons who for their own convenience or the convenience of their employees have available for rehydration and consumption on the premises such nonperishable items as dehydrated coffee, soup, hot chocolate or other dehydrated food or beverage.

Subd. 8. A licensed pharmacy selling only food additives, food supplements, canned or prepackaged infant formulae, ice manufactured and packaged by another, or such nonperishable food items as bottled or canned soft drinks and prepackaged confections at retail.

[1971 c 339 s 15; 1974 c 2 s 2-4; 1975 c 412 s 13]

28A.16 PERSONS SELLING LIQUOR. The provisions of the Minnesota consolidated food licensing law, sections 28A.01 to 28A.16 and acts amendatory thereto, shall not apply to persons licensed to sell nonintoxicating malt liquor "on-sale" as provided in section 340.02, or to persons licensed to sell intoxicating liquors "on-sale" or "off-sale" as provided in section 340.11, provided that these persons sell only ice manufactured and packaged by another, or such nonperishable food items as bottled or canned soft drinks and prepacked confections at retail.

[1971 c 339 s 16; 1974 c 2 s 5]

28A.17 LICENSE RENEWAL. Licenses for food processors or manufacturers shall be renewed annually on January 1. Licenses for retail and wholesale food handlers shall be renewed annually on July 1.

[1976 c 2 s 7]