

1938 Supplement  
To  
**Mason's Minnesota Statutes**  
1927

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

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



Edited by

WILLIAM H. MASON, Editor-in-Chief  
W. H. MASON, JR.  
R. O. MASON  
J. S. O'BRIEN  
H. STANLEY HANSON  
R. O. MASON, JR. } Assistant Editors

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**3787-20. Chief oil inspector to be under direction of department head.**—The chief oil inspector in the performance of his duties shall at all times be subject to the control of and supervision of the directing head of the department of which the oil inspection division has been made a part by law. The provisions of this act shall be subject to the provisions of Chap-

ter 426, Laws 1925 [ §§53-1 to 53-52 ] or any amendments thereto. (Act Apr. 27, 1929, c. 425, §20.)

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

**3787-21. Inconsistent acts repealed.**—All acts and parts of acts inconsistent herewith are hereby repealed. (Act Apr. 27, 1929, c. 425, §21.)

## CHAPTER 21

### Inspection of Food and Other Articles

#### **3794. Salaries of dairy and food commissioner and employees.**

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

#### **3798. Right of inspection.**

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

#### **3801. Price not collectible.**

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

#### **3806. Labeling.**

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

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

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

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

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

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

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

#### **3811. Milk and cream.**

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

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

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

no permit, inspection, or other authorization shall be required of such person unless the cost thereof is paid by the municipality, agency or board requiring the same. ('21, c. 495, §24; Apr. 20, 1935, c. 217.)

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

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

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

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

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

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

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

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

#### **3820. Local inspection.**

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

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

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

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

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

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

Charging a local resident within five miles of village a fee of \$1 and requiring a license fee of \$25 from persons who lived more than five miles from village is an unreasonable and arbitrary distinction, rendering ordinance invalid. Id.

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

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

**3821-5. Commissioner of agriculture to audit books in certain cases.**—Whenever complaint shall be made to the Commissioner of Agriculture that any person, firm or corporation is violating the provisions of Chapter 162 of the Laws of 1927 [ §§3821-1 to 3821-4 ], and/or whenever the Commissioner of Agriculture

shall have reason to believe that any person, firm or corporation is violating the provisions of said chapter, the Commissioner of Agriculture may cause the books and records of the person, firm or corporation alleged to be violating said chapter to be examined and audited by a competent accountant familiar with creamery practices and the handling of books and accounts of creameries. Such audit shall be made for the purpose of aiding in determining whether or not there has been a violation of said Chapter 162 of the Laws of 1927. (Act Apr. 25, 1931, c. 414, §1.)

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

**3824. Dairy products—Preservatives.**

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

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

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

**3827 to 3827-5. [Repealed.]**

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

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

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

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

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

contain such relative amounts of ingredients, that when diluted according to directions, it shall comply with the above definition of ice cream mix.

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

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

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

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

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

centum by weight of milk fat and not less than four per centum by weight of milk solids and weighs not less than five and one-half pounds per gallon.

(i) "Fruit Ice or Ice Sherbet" means the pure, clean, frozen product made from water, sugar, dextrose and honey with fruit or fruit juice flavoring and coloring, with not less than four-tenths of one per centum of acid (as determined by the Mann Acid Test) and with or without added edible gelatin or vegetable stabilizer; and in the manufacture of which, freezing has been accompanied by agitation of the ingredients. It contains no milk solids and weighs not less than five and one-half pounds per gallon.

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

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

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

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

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

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

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

place and sanitary equipment, it shall issue to the applicant a license therefor. (Mar. 25, 1937, c. 101, §4.)

**3827-10. Non-resident manufacturers to obtain license.**—Any person who manufactures frozen foods, ice cream mix or ice cream mix base, as defined herein, outside of the state, for sale within the state, shall apply for registration with the Department of Agriculture, Dairy and Food in such form and furnish such information as the department may require. Samples of all frozen foods, ice cream mix or ice cream mix base, so manufactured for sale and sold within this state shall be submitted. Each application shall be accompanied by a fee of \$5.00 which shall constitute the registration fee in case certificate of registration is granted. If the Department of Agriculture, Dairy and Food shall find that the samples so submitted are up to the accepted standards, and otherwise comply with the laws of this state, then they shall issue to applicant a certificate of registration. (Mar. 25, 1937, c. 101, §5.)

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

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

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

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

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

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

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

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

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

**3827-14. Plants must be kept sanitary.**—Any plant or establishment for the manufacture of frozen foods, ice cream mix or ice cream mix base, as defined here-

in, operated under the provisions of this act shall be so located, constructed and equipped that it may be kept in a clean and sanitary condition. (Mar. 25, 1937, c. 101, §9.)

**3827-15. Milk must be pasteurized.**—All milk, and/or milk products used as constituents of frozen foods, ice cream mix or ice cream mix base, as defined herein, shall be pasteurized. Pasteurization is hereby defined as the process of heating milk and/or milk products to a temperature of not less than 145 degrees F., and holding at that temperature for not less than 30 minutes. After pasteurization such milk and/or milk products shall be immediately cooled to at least 50 degrees F., and held at or below that temperature until frozen.

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

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

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

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

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

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

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

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

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

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

**3851-3855. [Repealed].**

Repealed by Laws 1931, c. 344, §9.

**3855-1. Oleomargarine not to be colored.**—That no person, firm or corporation shall by himself, herself or themselves, or by his, her or their agent or servant, nor shall any officer, agent, servant or employe of any person, firm or corporation, manufacture, sell, ship, consign, offer for sale, expose for sale, or have in possession with intent to sell, oleomargarine or any

similar substance, article, product or compound made wholly or in part out of any fats, oils or oleaginous substances or compound thereof, not produced from pure, unadulterated milk, or cream from the same, without the admixture or addition of any fat foreign to said milk or cream, and which shall be in imitation of yellow butter produced from pure, unadulterated milk, or cream of the same, with or without coloring matter; nor unless the said article, product, or compound, so manufactured, shipped, consigned, offered for sale, exposed for sale, or had in possession with intent to sell, shall be made and kept free from all coloration or ingredients causing it to look like butter of any shade of yellow, as hereinafter described; nor unless the same shall be kept and presented in a separate and distinct form and in such manner as will advise the purchaser and consumer of its real character; nor unless such person, firm or corporation shall in all respects comply with and observe the provisions of this act. For the purpose of this act, oleomargarine or similar substances shall be deemed to look like, be in resemblance of, or in imitation of butter of a shade of yellow, when it has a tint or shade containing more than one and six-tenths degrees of yellow, or of yellow and red collectively, but with an excess of yellow over red, as measured in the terms of the Lovibond tintometer scale, or its equivalent. Nothing in this act shall be construed as prohibiting the manufacture or sale of oleomargarine made in whole or in part from animal fats or oils. (Act Apr. 25, 1931, c. 344, §1.)

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

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

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

**3855-4. Must be stamped or placarded.**—It shall be unlawful for any person to sell or offer or expose for sale, or have in possession with intent to sell, any oleomargarine which is not marked and distinguished on the outside of each tub, package, or parcel thereof in a conspicuous place, by a placard with the word

"oleomargarine" printed in English thereon; such placard to be placed in a conspicuous position in full view of the purchaser; and the said word "oleomargarine" on such placard shall be printed in plain uncondensed gothic letters, each letter not less than one inch in height, and such placards shall contain no other words thereon; and there shall also be displayed upon each tub, package or parcel containing such oleomargarine in the same manner and in a conspicuous position, a placard with the word "oleomargarine" printed thereon in the same form as above described in this section; and when oleomargarine is sold from such package, or tub, or otherwise at retail, in print, roll, or other form, before being delivered to the purchaser, it shall be wrapped in wrappers plainly stamped on the outside thereof with the word "oleomargarine" printed or stamped thereon in English in letters one-fourth inch square, the quantity sold, and immediately following there shall appear upon the wrapper the name and address of the manufacturer. (Act Apr. 25, 1931, c. 344, §4.)

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

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

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

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

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

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

**3855-10. Tax on oleomargarine.**—There is hereby imposed, levied and assessed an inspection fee and excise tax of ten cents upon each pound of oleomargarine containing less than 65% of animal fats and/or oils and upon each pound of oleomargarine containing any fats or oils other than animal fat and/or oil, milk fat, peanut, cottonseed or corn oil sold, offered or exposed for sale, or given or delivered to a consumer, such fee and tax to be paid to the Commissioner of Agriculture, Dairy and Food prior to any such sale, gift or delivery. For the purposes of this Act any fractional part of a pound contained in a container, package or carton shall be deemed to be a pound. (Act Apr. 8, 1933, c. 175, §1.)

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

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

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

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

**3855-15. Redemption of unused stamps.**—Upon written request of the original purchaser thereof and the return of any unused stamps, the Commissioner of Agriculture, Dairy and Food shall redeem such stamps and cause a refund to be made therefor. The Commissioner shall prepare a voucher showing

the amount of such refund due and the auditor of state shall draw a warrant on the treasurer of state for such amount. (Act Apr. 8, 1933, c. 175, §6.)

**3855-16. Violations—penalties.**—Any person violating any of the provisions of the preceding sections of this Act, or any rule or regulation prescribed by the Commissioner of Agriculture, Dairy and Food, shall be punished by a fine of not less than \$25.00 nor more than \$100.00, or by imprisonment for not more than thirty days in the county jail, and such violation shall cause for immediate cancellation of any license issued to such person by the Commissioner. (Act Apr. 8, 1933, c. 175, §7.)

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

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

**3858. Eggs, dockage of—Candling—Reports.**  
Certificate is required of wholesaler but not local merchant, though local merchant must candle eggs. Op. Atty. Gen. (135b-6(e)), Jan. 29, 1936.

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

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

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

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

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

**3862. Civil service—Board of Examiners.**—To carry out the provisions of the preceding section of this act, a board of examiners is hereby created consisting of the state dairy and food commissioner, the dean of the agricultural college and the Chief Oil Inspector. In case of death or inability to act as one of three persons herein designated, the governor of the state shall appoint some person temporarily to act in his place. The state dairy and food commissioner shall be secretary of such board and shall keep all the records which shall contain all the proceedings of the board in reference to examinations and of its actions in carrying out the provisions of this act. The secretary of the board shall likewise keep and have open to the inspection of the public, a list of the names of the persons who are eligible to appointment. Two members of the board shall constitute a quorum for the transaction of business. A chairman shall be elected by the board from its

number. None of the members of the board shall receive any compensation for the services herein required, except their reasonable and necessary expenses, which shall be paid out of the fund appropriated for the maintenance of the state dairy and food department in the same manner as other charges against such fund are paid. ('21, c. 495, §75; Apr. 11, 1929, c. 164.)

#### **3864. Examiners.**

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

### MISCELLANEOUS ANIMAL FEED

#### **3883. Articles included within terms.**

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

### MILK, CHEESE AND BUTTER

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

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

#### **3920. [Repealed].**

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

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

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

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

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

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

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

### CREAM GRADING AND TESTING

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

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

(b) The term "cream buying station" shall mean any place other than a creamery, where deliveries of

cream are weighed, sampled, and/or tested for purchase on a butterfat basis.

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

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

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

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

Grade One shall consist of cream that is clean, free from undesirable odors and flavors, the acidity of which calculated as lactic acid shall at no time have exceeded .60% at the time and place of purchase.

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

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

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

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

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

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

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

**3928-10. Must have licensed cream buyer.**—A licensed cream buyer, duly qualified to grade and test cream, shall be maintained in each creamery and in each cream buying station where cream is purchased. A grading and testing license shall be issued by the Department of Agriculture, Dairy and Food, to such person who shall have passed a satisfactory examina-

tion in person and shall have proved by actual demonstration before an inspector or authorized agent of the Department that he is competent and qualified to grade and test cream and that he is fully conversant with all the requirements of this Act. Every such license shall be issued for a period ending on the thirty-first day of December following, and shall not be transferable. The fee for each such annual license shall be One Dollar, and shall be paid to the Department of Agriculture, Dairy and Food, or its agent before such license or renewal thereof is issued. (Act Mar. 20, 1935, c. 61, §7.)

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

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

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

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

**3929. Milk and cream cans must be sterilized.**

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

**3933. Certain butter compounds must be labeled.**

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

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

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

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

#### EGGS AND EGG PRODUCTS

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

**3935-12. Sale of unfit eggs prohibited.**—No person shall sell, offer or expose for sale, or have in his possession for sale, any egg unfit for human food, unless the same is broken and then denatured so that it cannot be used for such purpose, except that eggs in unbroken, artificially colored shells to be sold for animal food only under direct supervision of the department, may be kept for sale and sold for such purposes. For the purposes of this act, an egg shall be deemed unfit

for human food if it be addled or mouldy, possess a black rot, a white rot, or a blood ring or blood spot; or if it has an adherent yolk, or a bloody or green white, or if it be incubated one day or more; or if it consists in whole or in part of a filthy, decomposed or putrid substance. (Apr. 26, 1937, c. 471, §2.)

**3935-13. Dockage.**—No dealer, in buying or selling eggs, shall take or give a greater or less dockage for eggs unfit for human food as herein defined, than the actual dockage as determined by the correct candling of the eggs purchased or sold, nor shall he undergrade eggs purchased nor overgrade eggs sold as such grading is determined and classified from time to time by the department, and every such dealer shall keep such candling records as may be required by the rules and regulations of the department, which records shall be open at all time for department examination. The department shall be charged with the enforcement of this act, and shall have the authority to promulgate all such rules and regulations as are necessary to the enforcement thereof. Provided however, that nothing in this act shall be construed to make the grading of eggs compulsory. (Apr. 26, 1937, c. 471, §3.)

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

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

**3935-16. Department to supervise egg business.**—The department is hereby vested with the power and authority to supervise, regulate and make reasonable rules and regulations not inconsistent with the law, relative to grading, candling, breaking, purchasing and selling of eggs and egg products for the purpose of preserving and protecting the public health. In addition hereto, it is the express purpose herein that inasmuch as the breaking of eggs for resale is a matter of state concern, the surroundings in which such product is handled should be maintained in a sanitary condition, and, therefore, the department shall establish reasonable rules and regulations, not inconsistent with law, relative to the inspection of all establishments wherein the business of breaking eggs for resale is maintained, and whenever the sanitary conditions of any such establishments are such that the product is rendered, or is likely to be rendered, unclean, unsound, unhealthful, unwholesome or otherwise unfit for human consumption, it shall have authority to revoke such license to break eggs for resale until such time as the department is satisfied that such establishment is maintained in a sanitary condition. Such rules and regulations shall be approved

as to form and legality by the attorney general and the same shall be published twice in a legal newspaper of general circulation published at the capitol of this state. From and after the tenth day succeeding the date of last publication such rules and regulations shall have full force and effect. An affidavit of such publication, setting forth the said rules and regulations in full and the dates of such publication thereof shall be made by the publisher of such newspaper or by the manager or agent of such publisher, and shall be kept on file in the office of the department with the original of such rules and regulations. Such affidavit of publication, or a duly certified copy thereof, shall be prima facie evidence of the facts therein contained and of the establishing, adopting and publishing of the rules and regulations. The department shall have the right from time to time to adopt different rules and regulations in the same manner as herein set forth. (Apr. 26, 1937, c. 471, §6.)

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

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

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

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

PAINTS

**3936. Linseed oil.**  
174M496, 219NW764.

POTATOES

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

GRADES

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

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

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

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

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

**3945-2. To be labeled.**—Every closed package containing potatoes offered or exposed for sale at wholesale or at retail in cities of the first and second class by persons other than the growers thereof, shall

bear upon the outside of each package either by brand, tag, or label in plain letters and figures the grade of the potatoes therein contained and the minimum weight when packed. (Act Mar. 18, 1931, c. 70, §2.)

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

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

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

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

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

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

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

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

Nothing herein shall prevent any person paying the proper inspection fees, duly established to the proper persons duly authorized to receive the same, but

the payment or allowance of any gratuity, commission or allowance in addition thereto shall constitute the crime of bribery and shall be punished by law as such. (Act Mar. 18, 1931, c. 70, §8.)

**3945-9. Certain acts unlawful.**—It shall be unlawful for dealer or person merchandising potatoes in the State of Minnesota with the intent to deceive, to attach any tag, label or brand to any closed package or carload of potatoes, any grade, certificate, brand or tag, which does not reasonably represent the true and correct grade, quality or standard of the grade, quality or brand of the potatoes contained in said closed package or carload, at the time of attaching the same, and the condition of said carloads and closed packages when said tags, labels, certificates or brands are found attached to them shall be prima facie evidence of the condition of the same at the time of attaching. (Act Mar. 18, 1931, c. 70, §9; Jan. 5, 1934, Ex. Ses., c. 41, §2.)

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

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

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

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

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

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

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

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

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

**3945-14. Standard grades.**—The standard grades for Minnesota potatoes shall be the United States potato grades and shall conform in all respects and be identical with the latest standards established by the United States Department of Agriculture for potatoes all of which grades and standards are hereby adopted and shall be used in this state in the grading of potatoes for sale, provided that potatoes not conforming to the established United States potato grades may be sold in this state if labeled, tagged or branded in the same manner as graded potatoes, except that in place of specifying the grade, the word "unclassified" shall be used; provided further that Certified Seed Potatoes inspected and certified under

the authority of the commissioner of agriculture shall not be affected by this act but shall be graded and tagged as required under the Seed Potato Certification Act, being Laws 1927, Chapter 115 [§§6139-1 to 6139-13]. (Act Apr. 13, 1935, c. 164, §3.)

**3945-15. All shipments must be tagged.**—(a) It shall be unlawful for any person, firm, trucker, association, organization or corporation, or agent, representative or assistant to any person, firm, trucker, association, organization, or corporation except those hereinbefore exempted, to sell, transport, deliver or consign potatoes prepared for market unless each container has been legibly and conspicuously tagged, branded, labeled and stenciled (before being moved from the premises of the person or persons responsible for the grading and packing), and the name of the grade legibly placed thereon, together with the true net contents expressed in weight.

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

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

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

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

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

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

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

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

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

**3945-18a. Violation a misdemeanor.**—Whoever violates this Act or any part or provision thereof, by not grading potatoes as herein required, or by not tagging or branding containers as herein required, or by removing or altering any tag or brands placed upon or attached to any containers as in this Act required, unless ordered to do so by the Commissioner of Agriculture, or his duly appointed representative or representatives, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than \$10.00, nor more than \$100.00 or by imprisonment in the county jail of not less than 30 days nor more than three months, or by both such fine and imprisonment in accordance with the discretion of the Court. (Act Apr. 13, 1935, c. 164, §9.)

**3945-18b. Acts severable.**—If any section, subsection, sub-division, sentence, clause, paragraph or phrase of this Act is for any reason held to be unconstitutional or void, such decision shall not affect the validity of the remaining portions of this Act, so long as sufficient remains of this Act to render the same operative and reasonably effective for carrying out the main purpose and intention of the Legislature in enacting the same, as such purpose and intention may be disclosed by this Act. (Act Apr. 13, 1935, c. 164, §10.)

**3945-18c. Inconsistent acts repealed.**—All acts and parts of Acts inconsistent herewith are hereby repealed. (Act Apr. 13, 1935, c. 164, §11.)

**3945-18d. Effective July, 1935.**—This Act shall be in full force and effect from and after July 1st, 1935. (Act Apr. 13, 1935, c. 164, §12.)

**3945-18e. Potatoes shall be inspected.**—That all potatoes offered for sale or shipped for sale by any person in carload lots in the state of Minnesota shall be inspected by an authorized Federal-State inspector to determine the grade, quality and condition of such shipment. Provided, however, that this act shall not apply to Minnesota grown potatoes between July 1st and September 15th of each year. (Apr. 19, 1937, c. 282, §1.)

**3945-18f. Place of inspection.**—Inspection of carload lots of potatoes shall be made at the point of origin when inspectors are available at such points. In cases where an authorized inspector is not available at such shipping points or adjacent to such shipping points, it shall be the duty of the commissioner of agriculture to designate points at which cars of potatoes may be inspected. (Apr. 19, 1937, c. 282, §2.)

**3945-18g. Standard grades.**—The standard grades for all Minnesota potatoes shall be limited to the US grades except certified seed potatoes produced under the supervision of the Seed Potato Certification Division of the University Farm which shall be graded and tagged as required under the Seed Certification Law. (Apr. 19, 1937, c. 282, §3.)

**3945-18h. Commissioner of agriculture to promulgate rules.**—The commissioner of agriculture shall promulgate rules and regulations deemed necessary to the proper enforcement of the provisions of this act after hearing given 30 days notice of such action and the publication of such proclamation two times in at least three papers of general circulation within the state. (Apr. 19, 1937, c. 282, §4.)

**3945-18i. Commissioner shall enforce Act.**—The commissioner of agriculture shall be charged with the enforcement of the provisions of this act and all the rules and regulations published thereunder. (Apr. 19, 1937, c. 282, § 5.)

**3945-18j. Fees.**—Fees for inspection shall be determined by the commissioner of agriculture. (Apr. 19, 1937, c. 282, § 6.)

**3945-18k. Definitions.**—The following terms when used in this act shall have the meaning as indicated:

(a) "Commissioner" shall mean the commissioner of agriculture, dairy and food of the state of Minnesota.

(b) "Potatoes" shall mean all the potatoes produced within the state of Minnesota and all potatoes offered for sale in carlots within the state of Minnesota.

(c) "Person" as used herein shall mean any grower, dealer, shipper, society, association, organization, corporation or their agents or representatives. (Apr. 19, 1937, c. 282, § 7.)

**3945-18l. Violation a misdemeanor.**—Whoever shall violate any provisions of this act or any rules or regulations made or published thereunder by the commissioner of agriculture shall be guilty of a misdemeanor. (Apr. 19, 1937, c. 282, § 8.)

Sec. 9 of Act Apr. 19, 1937, cited, provides that the Act shall take effect from its passage.

#### FRUITS

**3945-21. Commissioner of agriculture to regulate sale of strawberries and raspberries.**—All fresh strawberries and raspberries that are offered for sale, packed for sale, or shipped for sale by any person other than the grower thereof in the State of Minnesota shall be handled and sold under rules and regulations made and designated by the Commissioner of Agriculture, Dairy and Food. The grades and the regulations controlling and handling of strawberries and raspberries shall be only determined by the Commissioner of Agriculture, Dairy and Food after due notice and public hearings with the producers of the same have been held. (Act Apr. 22, 1933, c. 420, § 1.)

**3945-22. Commissioner to enforce rules and regulations.**—The Commissioner of Agriculture, Dairy and Food shall be charged with the enforcement of the provisions of this act and all the rules and regulations made and published thereunder. (Act Apr. 22, 1933, c. 420, § 2.)

**3945-23. May revoke license.**—The Commissioner of Agriculture, Dairy and Food may revoke any license issued under his authority upon proof of violation of the provisions of this act and any of such rules and regulations made in pursuance thereof. (Act Apr. 22, 1933, c. 420, § 3.)

#### AGRICULTURAL SEEDS

##### 3957-1. Definitions.

Definition of seed grains in Laws 1935, c. 50, § 9, controls and governs as to such law and supersedes this act for purpose thereof. Op. Atty. Gen. (36a-44), Mar. 21, 1935.

County board in purchasing and selling seed grains to farmers under Seed Loan Act is not governed by this act. Op. Atty. Gen. (833f), Mar. 30, 1935.

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

(c) The approximate total percentage by weight of weed seeds of all species and the name and approximate number per pound of agricultural seeds of each of the kinds of weed seeds hereinafter specified, whenever the total number of any or all of such kinds exceeds ten per pound of agricultural seeds: Quack grass (*Agropyron repenes*), Canada Thistle (*Carduus arvensis*), Perennial Sow Thistle (*sonchus arvensis*), Didders (*Cuscuta supp.*), Leafy Spurge (*Euphorbia esula*), Ox Eye Daisy (*Chrysan-*

*themum leucanthemum*), and Buckhorn Plantain (*Plantago Lanceolata*); provided, that whenever such weed seeds are found in number not exceeding ten of all kinds in the aggregate per pound of agricultural seeds, the word "trace" together with the name of each and every kind of weeds seeds so found shall appear on the label. (As amended Apr. 5, 1929, c. 137.)

Where tag of label attached to a bag or package of seed states kind of seed and that it is 98% pure, such statement is a warranty of purity of seed as so stated. *Mallery v. N.*, 196M129, 264NW573. See Dun. Dig. 8546.

Evidence does not justify holding, as a matter of law, that plaintiff was prevented or stopped from recovering damages for breach of warranty of seed purchased, on ground that he failed to inspect seed before sowing same. *Id.* See Dun. Dig. 8566.

The prohibition of subd. (g) applies to farmer sowing or selling his own seed. Op. Atty. Gen., Apr. 2, 1930.

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

##### 3965-1. Licenses required for manufactures of.

Restaurants, hotels or other places where they are mixing soft drinks, quart or more, are required to have manufacturer's licenses. Op. Atty. Gen., Aug. 7, 1931.

**3965-3. Definitions of soft drinks.**—Wherever used in this Act, the terms "Soft drinks and other non-alcoholic beverages" shall mean and include (a) carbonated or still beverages, (b) beverages containing milk fat, (c) natural and mineral waters, carbonated, plain or otherwise, but shall not include apple or fruit ciders, or natural fruit juices, or cereal beverages. (As amended Apr. 22, 1937, c. 359, § 1.)

Whether a mineral water to which several alkaline salts have been added, which may be used in connection with certain skin diseases and for hangovers and the like is a soft drink subject to licensing and registration is a question of fact. Op. Atty. Gen. (634b), June 25, 1935.

Milk and cream are not beverages as such. Op. Atty. Gen. (681f-3), May 26, 1937.

##### 3965-4. Applications for license—Fee—Issue of license.

It is permissible for a manufacturer or distributor to have branches for distributing its products, but branch addresses should not be contained on the label in such manner as to indicate that license was issued for such addresses. Op. Atty. Gen. (634c), May 15, 1935.

**3965-9. Carbonated beverages defined.**—A carbonated or still beverage within the meaning of this Act, shall be a beverage made of pure cane, beet sugar, and/or refined corn sugar, with pure water, and pure flavoring materials, with or without fruit acids and harmless coloring materials, and the finished product shall contain not less than seven per centum of sugar and less than  $\frac{1}{2}$  of one per centum of alcohol by volume. All carbonated or still beverages not conforming to the above requirements, this Act, the Minnesota Dairy and Food Law, or the rules, regulations, definitions and standards made thereunder, shall be deemed to be adulterated. ('27, c. 42, § 9; Apr. 21, 1933, c. 378.)

**3965-16. Definitions—barley content of malt.**—"Fermented Malt-Beverages" shall mean any liquor or liquid capable of being used for beverage purposes, made by the alcoholic fermentation of an infusion in potable water of barley malt and hops, with or without unmalted grains or decorticated and degerminated grains or sugar, containing one-half of one per centum or more of alcohol by volume. No fermented malt beverages shall be sold in this state after July 1st, 1937, unless sixty-six and two-thirds per cent (66- $\frac{2}{3}$ %) or more of the grain used in its manufacture consists of barley malt. (Mar. 8, 1937, c. 59, § 1.)

**3965-17. Department of Agriculture to enforce act.**—The Department of Agriculture, Dairy and Food shall be charged with the enforcement of this Act, and is hereby authorized and directed to procure samples on the open market for chemical analysis. (Mar. 8, 1937, c. 59, § 2.)

**3965-18. Violations a misdemeanor.**—Any violation of this act shall be a misdemeanor and punishable accordingly. (Mar. 8, 1937, c. 59, § 3.)