1941 Supplement

To

Mason's Minnesota Statutes, 1927

and

Mason's 1940 Supplement

Containing the text of the acts of the 1941 and 1943 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 Law Review Articles and digest of all common law decisions.

Edited by
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Subd. 10. Each gasoline pump in this state shall have the total sales price per gallon posted on the pump in a conspicuous manner. (Act Apr. 28, 1941, c. 495, §20; as amended Apr. 6, 1943, c. 320, §§13, 14.)
[296.22]

Laws 1943, c. 320, §13, repealed Subd. 5, §20, of c. 495, Laws 1941.

Subd. 5. [Repealed.]
Repealed. **Laws 1943, c. 320, §13.**
Reenacted. Laws 1943, c. 320, §14.

It is the duty of owner of an underground gasoline storage tank installed by him in a public alley to remove it within a reasonable time after its use has been abandoned by a lessee thereof, or to seal it so as to remove danger from explosive vapors remaining therein. Fjellman v. **Weller, 213M457, 7NW(2d)521.** See Dun. Dig. 3699.

An owner of an underground gasoline storage tank who installs it and maintains it in a public alley is under a positive duty to inspect and properly maintain it so as to eliminate danger from explosion. Id.

3787-45. Certain blending prohibited.—The blending of gasoline on which the tax has been paid or the liability assessed therefor with any substance on which the tax has not been paid or the liability assessed therefor is prohibited. (Act Apr. 28, 1941, c. 495, §21.)
[296.23]

3787-46. State officer or employee engaging in business as a distributor or dealer, prohibited.—Any officer or employee of the state of Minnesota charged with the enforcement of any provision of this act who is employed by or who engages in business as a distributor or dealer in petroleum products shall be guilty of a misdemeanor. (Act Apr. 28, 1941, c. 495, §22.)
[296.24]

3787-47. Failure to comply with act.—Any person who fails to comply with any provisions of this act shall be guilty of a misdemeanor unless other penalties are expressly provided. (Act Apr. 28, 1941, c. 495, §23.)
[296.25]

3787-48. Action for recovery of a penalty not a bar to action for recovery of another.—No action or suit for recovery of one penalty shall be a bar to or affect the recovery of any other penalty or be a bar to any criminal prosecution against any licensee or any other person under the provisions of this act. (Act Apr. 28, 1941, c. 495, §24.)
[296.26]

3787-49. Commissioner to make rules and regulations.—The commissioner may make rules and regulations relating to the administration and enforcement of this act and other laws regulating the sale, distribution and use of petroleum products. The rules and regulations shall be reasonable and not inconsistent with the law. They shall become effective from their publication by posting and keeping posted a copy thereof on a bulletin board in the office of the commissioner, and by the mailing of a copy to all licensed distributors. Rules and regulations heretofore issued and in force shall continue until amended or revoked. (Act Apr. 28, 1941, c. 495, §25.)
[296.27]

3787-50. Repealer—Certain provisions subject to this act.—Mason's Supplement 1940, Sections 2720-70, 2720-71½, 2720-72, 2720-74, 2720-75, 2720-78, 2720-79, 2720-79½, 2720-81, 2720-86, 2720-87, 2720-88, 2720-89, 2720-90, 2720-91, 3773, 3787-1 to 3787-21, 10536-17 and 10536-18, and Mason's Minnesota Statutes of 1927, Sections 2720-76, 2720-77, 2720-80, 2720-82, 2720-84, 2720-85 and 10249 are hereby expressly repealed. The tax imposed by Mason's Supplement 1940, Section 2720-71, as amended, shall be paid by the person and collected in the manner prescribed herein. (Act Apr. 28, 1941, c. 495, §26.)
Sec. 27, Act Apr. 28, 1941, c. 495, provides that the act shall take effect Sept. 1, 1941.

CHAPTER 21

Inspection of Food and Other Articles

3788. Minnesota Dairy and Food Law.
Frozen food lockers. Laws 1943, c. 276.
Horse meat. **Laws 1943, c. 446.**

3789. Unlawful to sell certain food.
In actions to recover damages for injuries caused by eating impure food products allegedly purchased at bakery, ownership of bakery held for jury. Shindelus v. Sevcik, 211M432, 1NW(2d)399. See Dun. Dig. 3782.

In an action to recover damages for injuries caused from eating impure food products purchased at bakery, evidence held to sustain finding that defendant, and not his son, was owner of the bakery. Cermak v. Sevcik, 215M203, 9NW(2d)508. See Dun. Dig. 3782.

One not the owner but holding himself out as the owner of a bakery may be held liable for damages for injuries caused from eating impure food products purchased at such bakery. Id. See Dun. Dig. 3782.

In action to recover damages for injuries caused from eating impure food products purchased at a bakery, evidence warranted finding that defendant held himself out as the owner of the bakery and that plaintiff and his wife relied upon such apparent ownership in making purchases. Id. See Dun. Dig. 3782.

In determining whether owner of restaurant sued in federal court for injuries to patron from unwholesome ham was entitled under the federal third party practice rule to have the packer who canned the ham made a third party defendant, fact that state law bars contribution to person who had been guilty of an intentional wrong or who is presumed to have known that he was doing an illegal act, does not warrant the court in indulging in such presumption, where defendant's position is that if the ham was unwholesome the packer was solely to blame since any violation of the state pure food statutes by the restaurant owner is technical only and not an intentional wrong if his position be sustained, and fact that the cause of action asserted by the defendant against the packer rests on a theory different from plaintiff's cause of action against defendant is immaterial. Jeub v. B/G Foods, Inc., (DC-Minn)2FRD238. See Dun. Dig. 1924, 3782, 7328, 7329.

3790. Definition of food.
Cited to the point that meat and fish intended for consumption by mink and other animals are "food" within statutes relating to cold storage warehouses. Op. Atty. Gen. (645b-8), June 29, 1942.

3791. Where food deemed to be adulterated.
The regulation of federal security administrator defining a food product and fixing a standard of quality should show that it was made to promote honesty and fair dealing in interest of consumers. Twin City Milk Producers Ass'n v. McNutt, (CCA8), 122F(2d)564, 123F(2d)396.

Failure to show the basis for a regulation defining and fixing a standard of quality for a food product would not invalidate the regulation where such omission could be corrected by the federal security administrator. Id.

French dressing may contain either mineral or vegetable oil. Op. Atty. Gen. (135b), May 20, 1941.

Delegation of authority to commissioner to make rules and regulations is not too indefinite to render it improper for commissioner to fix percentage of moisture that may be permitted in sale of oysters. Op. Atty. Gen. (135B-1), Feb. 18, 1942.

Use of benzoate of soda and sulphur dioxide to preserve unprocessed sauer kraut in glass jars is prohibited. Op. Atty. Gen. (135b-1), May 19, 1943.

Sale of orange and grapefruit marmalade in Minnesota containing a trace of sulphur dioxide is not prohibited. Op. Atty. Gen. (135b-1), June 16, 1943.

3792. When food is deemed to be misbranded.
Bottled root beer described as "draft" beer contains a false statement without misleading public and would hardly warrant a prosecution. Op. Atty. Gen. (135b-5), June 29, 1942.

Word "draft" as applied to beer, either root or lager, is used to distinguish it from bottled beer. Op. Atty. Gen. (135b-5), June 29, 1942.

Carton of crackers branded "Champion-Flake Butters" was misbranded where there was no butter in the crackers, though smaller type give the ingredients. Op. Atty. Gen. (135b-2), Apr. 26, 1943.

Commissioner may not approve the making of imitation ice cream containing milk fat one and one-half per cent and an acidity below .2 of 1 per cent, and flavored with vanilla. Op. Atty. Gen. (136d), Dec. 16, 1943.

3799. Seizure, search, warrants.

Section does not permit seizure of adulterated canning compounds. Op. Atty. Gen. (136d), May 21, 1943.

3804. Definitions and standards.

In fixing a definition and standard of quality of a food product, the federal food security administrator could use the name by which it was generally known to the ultimate consumer, rather than a name decided on by the producer. Twin City Milk Producers Ass'n v. McNutt, (CCA8), 122F(2d)564, 123F(2d)396.

Rule that dog food and human food may not be stored in same showcase or refrigerator is unreasonable, unless dog food is unsanitary in fact. Op. Atty. Gen. (135b-9), Feb. 16, 1943.

3806. Labeling.

Branding and advertising of a product to be used in mixing butter and milk or oleomargarine and milk and containing bi-carbonate of soda held misleading and false. Op. Atty. Gen. (135g-2), Apr. 22, 1943.

3810. Disposition of receipts.

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

3811. Milk and cream.

An act authorizing the Commissioner of Agriculture, Dairy and Food, during the present war and until 60 days following the cessation of hostilities when declared by competent authority, to fix standards and quality of composition of milk and its products. Laws 1943, c. 509, §1.

3812. Skimmed milk.

Where a regulation of the federal security administrator defined and fixed standard of quality for skim milk products for human use only, court would not grant a petition for rehearing to introduce evidence on the subject of skim milk products for animal feed. Twin City Milk Producers Ass'n v. McNutt, (CCA8), 122F(2d)564, 123 F(2d)396.

3813. Milk and cream—Sales licensed.

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

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

Various licenses may be posted in open faced paper display envelopes in a series fastened together at top like sheets of a calendar. Op. Atty. Gen. (829c), July 25, 1941.

A village may not impose a license fee upon any dairy farmers selling their own milk, but may prohibit sale of unpasteurized milk. Op. Atty. Gen. (292E), Feb. 11, 1942.

Right of a village to adopt an ordinance licensing the sale of milk and cream reserved for further consideration. Op. Atty. Gen. (292e), May 4, 1943.

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

Subdivision 1. All milk and cream sold or purchased for the purpose of manufacture into butter or cheese, or for the purpose of condensing or drying the same, shall be sold and purchased by weight and payment shall be made therefor upon the basis of milk fat therein contained and not otherwise; provided, that in purchasing whole milk from which the milk fat or cream is to be separated and the skimmed milk sold or processed separately, the purchaser shall pay for such skimmed milk by weight in addition to the amount paid for milk fat as herein prescribed, computing the skimmed milk at eighty per cent of the weight of the whole milk. The percentage of milkfat in such milk and cream shall be determined by the Babcock test and by employing a standard official method for operating said test, which method shall be that adopted, prescribed and set forth with specifications in detail, in the rules and regulations from time to time made and published by the commissioner under and pursuant to authority therefor conferred by the Minnesota Dairy and Food Law for the purpose of carrying out and enforcing the provisions thereof, which authority hereby expressly is declared to be applicable in the premises.

Subdivision 2. All glassware, test-bottles, pipettes, acid measures, chemicals, scales and other apparatus used in the operation of said test shall conform to the specifications set forth in said method.

Subdivision 3. Any person who shall use any appliances other than the Standard Babcock glassware for measuring or testing milk or cream sold or purchased at prices determined upon the basis of milkfat therein contained, or who shall manufacture or sell Babcock glassware which is not constructed and/or graduated in accordance with said specifications, or who shall employ any test other than the Babcock test or any method other than said Standard official method for determining the milkfat content of milk or cream or who shall underread or otherwise falsify or manipulate the reading of the test, or who shall falsely state, certify or use in the purchase or sale of milk or cream a misreading of such test, whether the test or actual reading shall have been made by such person or by any other person, shall be deemed guilty of a misdemeanor. (As amended Act Apr. 21, 1941, c. 327, §1.)

3820. Local inspection.

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

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

City may create office of milk inspector and fix his salary, but may not enter into cooperative milk inspection agreement with another state and cities therein whereby each pays a specified part of his salary and travel expense. Op. Atty. Gen. (292e), Dec. 29, 1941.

A village may not impose a license fee upon any dairy farmers selling their own milk, but may prohibit sale of unpasteurized milk. Op. Atty. Gen. (292E), Feb. 11, 1942.

3824. Dairy products—Preservatives.

Branding and advertising of a product to be used in mixing butter and milk or oleomargarine and milk and containing bi-carbonate of soda held misleading and false. Op. Atty. Gen. (135g-2), Apr. 22, 1943.

3825-1. Sale of horse meat—Licenses—Places of sale to be plainly marked.—It shall be unlawful for any person to sell, offer or expose for sale, or have in possession with intent to sell, horse meat for human consumption;

(a) Without first having obtained a license granted by the commissioner of agriculture, dairy and food, who shall provide a suitable form of blank application for the use of the applicant. The fee for such license shall be $10.00 and the license 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 in such place;

(b) Unless a sign is posted in a conspicuous place both inside and outside the store or building in which said meat is sold or offered or exposed for sale, reading "horse meat sold here";

(c) Unless the counter or container in which the same is offered or exposed for sale is plainly and conspicuously marked with the words "horse meat" and no other meat of any other kind shall be placed in the same container with horse meat; if horse meat is placed in the same counter with other cuts of meat each cut shall be plainly labeled "horse meat".

(d) Unless all packages, boxes or containers in which horse meat is delivered to the purchaser shall

be plainly and conspicuously marked with the words "horse meat". (Act Apr. 14, 1943, c. 446, §1.)
[31.435]

3825-2. Same—Sales in restaurants and boarding houses.—It shall be unlawful for any restaurant, boarding house or other place where food is served to the public to prepare or serve horse meat to any customer or patron unless a sign is posted in a conspicuous place, both inside and outside the building or restaurant in which such meat is prepared and sold reading "horse meat served here", and unless the same words are printed or typed on all menus used therein; but said place preparing and serving horse meat shall not be required to procure the license provided by Section 1 of this act. (Act Apr. 14, 1943, c. 446, §2.)
[31.435]

3825-3. Same—Mixed meat.—In the event that horse meat is mixed with any other kind of meat, the mixture shall be considered as horse meat and its sale, preparation or serving shall be subject to all of the provisions of this act. (Act Apr. 14, 1943, c. 446, §3.)
[31.435]

3825-4. Same—Commissioner of Agriculture to enforce act.—The commissioner of agriculture, dairy and food shall enforce the provisions of this act and in so doing shall have all the power and authority granted to him in Mason's Minnesota Statutes of 1927, Sections 3788 to 3873, as amended. (Act Apr. 14, 1943, c. 446, §4.)
[31.435]

3825-5. Same—Violation a misdemeanor. — Any person violating any of the provisions of this act shall be deemed guilty of a gross misdemeanor. (Act Apr. 14, 1943, c. 446, §5.)

3827-6. Definitions.—

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

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

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

Subdivision 4. "Mix" or "Ice Cream Mix" means the mixture from which ice cream is frozen, made from a combination of milk products and one or more of the following ingredients: eggs, sugar, dextrose, corn syrup in liquid or dry form, and honey, with or without flavoring and coloring, and with or without edible gelatin or vegetable stabilizer. It contains not more than one-half of one per cent by weight of edible gelatin or vegetable stabilizer, not less than 12 per cent by weight of milk fat, and not less than 20 per cent by weight of total milk solids. Ice cream mix in concentrated or condensed form shall contain such relative amounts of ingredients, that when diluted according to directions, it shall comply with the above definition of ice cream mix.

Subdivision 5. "Ice Cream Mix Base" means ice cream powder or dry ice cream mix and is the product resulting from the removal of water from ice cream mix and contains all tolerances allowed for, not less than 30.5 per cent of milk fat and not less than 64.5 per cent of total solids and not more than five per cent of moisture.

Subdivision 6. "Ice Cream" means the pure, clean, frozen product made from a combination of milk products and one or more of the following ingredients: eggs, sugar, dextrose, corn syrup in liquid or dry form, and honey, with or without flavoring and coloring, and with or without edible gelatin or vegetable stabilizer; and in the manufacture of which, freezing has been accompanied by agitation of the ingredients. It contains not more than one-half of one per cent by weight of edible gelatin or vegetable stabilizer, not less than 12 per cent by weight of milk fat, and not less than 20 per cent by weight of total milk solids; except when fruits, nuts, cocoa or chocolate, maple syrup, cakes or confections are used for the purpose of flavoring, then it shall contain not less than 12 per cent by weight of milk fat and not less than 20 per cent by weight of total milk solids, except for such reduction in milk fat and in total milk solids as is due to the addition of such flavoring, but in no such case shall it contain less than ten per cent by weight of milk fat or less than 16 per cent by weight of total milk solids. In no case shall any ice cream contain less than one and six-tenths pounds of total food solids per gallon or weigh less than four and one-half pounds per gallon.

Subdivision 7. "Frozen Custard" means French ice cream, French custard ice cream, ice custard, parfaits and similar frozen products. Frozen custard is a pure, clean, frozen product made from a combination of milk products and one or more of the following ingredients: egg yolk, sugar, dextrose, corn syrup in liquid or dry form, and honey, with or without flavoring and coloring, and with or without edible gelatin or vegetable stabilizer; and in the manufacture of which, freezing has been accompanied by agitation of the ingredients. It contains not more than one-half of one per cent by weight of edible gelatin or vegetable stabilizer, not less than 12 per cent by weight of milk fat, not less than 20 per cent by weight of total milk solids, not less than five egg yolks or their equivalent in egg powder or egg yolk powder in each gallon of finished product. In no case shall any frozen custard contain less than one and six-tenths pounds of total food solids per gallon or weigh less than four and one-half pounds per gallon.

Subdivision 8. "Ice Milk" means the pure, clean, frozen product made from a combination of milk products and one or more of the following ingredients: sugar, dextrose, corn syrup in liquid or dry form, and honey with flavoring, but without coloring, and with or without edible gelatin or vegetable stabilizer; and in the manufacture of which, freezing has been accompanied by agitation of the ingredients. It contains not more than one-half of one per cent by weight of edible gelatin or vegetable stabilizer, not less than two per cent and not more than 12 per cent by weight of milk fat, and not less than 14 per cent by weight of total milk solids. In no case shall any ice milk contain less than one and three-tenths pounds of total food solids per gallon or weigh less than five pounds per gallon.

Subdivision 9. "Milk Sherbet" means the pure, clean, frozen product made from a combination of milk products and one or more of the following ingredients: eggs, sugar, dextrose, corn syrup in liquid or dry form, and honey with fruit or fruit juice flavoring and coloring, with not less than four- tenths of one per cent of acid (as determined by the Mann Acid Test) and with or without added edible gelatin or vegetable stabilizer; and in the manufacture of which, freezing has been accompanied by agitation of the ingredients. It contains not less than two per cent by weight of milk fat and not less than four per cent by weight of milk solids and weighs not less than five and one-half pounds per gallon.

Subdivision 10. "Fruit Ice or Ice Sherbet" means the pure, clean, frozen product made from water, sugar, dextrose, corn syrup in liquid or dry form, and honey with fruit or fruit juice flavoring and coloring, with not less than four-tenths of one per cent of acid (as determined by the Mann Acid Test) and with or without added edible gelatin or vegetable stabilizer; and in the manufacture of which, freezing has been accompanied by agitation of the ingredients. It con-

tains no milk solids and weighs not less than five and one-half pounds per gallon.

Subdivision 11. "Frozen Malted Milk" means the pure, clean, semi-frozen product made from the combination of milk products, malted milk and one or more of the following ingredients: eggs, sugar, dextrose, corn syrup in liquid or dry form, and honey, with or without flavoring and coloring, and with or without edible gelatin or vegetable stabilizer; and in the manufacture of which, freezing has been accompanied by agitation of the ingredients. It contains not more than one-half of one per cent by weight of edible gelatin or vegetable stabilizer, not less than seven per cent by weight of milk fat, not less than 14 per cent by weight of total milk solids, and not less than three per cent by weight of malted milk. In no case shall frozen malted milk contain less than one and three-tenths pounds of total food solids per gallon or weigh less than four and one-half pounds per gallon.

Subdivision 12. "Imitation Ice Cream" means any frozen substance, mixture or compound, regardless of the name under which it is represented, which is made in imitation or semblance of ice cream, or is prepared or frozen as ice cream is customarily prepared or frozen, and which is not ice cream, frozen custard, ice milk, milk sherbet, fruit ice or ice sherbet, or frozen malted milk, as defined in this act.

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

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

Commissioner may not approve the making of imitation ice cream containing milk fat one and one-half per cent and an acidity below .2 of 1 per cent, and flavored with vanilla. Op. Atty. Gen. (136d), Dec. 16, 1943.

3827-13. All containers shall be labeled.

Commissioner may not approve the making of imitation ice cream containing milk fat one and one-half per cent and an acidity below .2 of 1 per cent, and flavored with vanilla. Op. Atty. Gen. (136d), Dec. 16, 1943.

3827-25. Definitions.—The term "food" as used herein shall include every article used for, or 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.

"Frozen Food Locker Plant" shall mean a place in which space in individual lockers is rented to individuals for the storage of food and which is artificially cooled for the purpose of preserving such food.

"Sharp frozen" shall mean the freezing of food in a room in which the temperature is zero degrees Fahrenheit or below.

The term "Department" as used herein shall mean the Department of Agriculture, Dairy and Food.

"Person" means any individual, partnership, corporation or association. (Act Apr. 2, 1943, c. 276, §1.)
[31.185]

3827-26. Operators of frozen food locker plants to obtain licenses from department of Agriculture, Dairy and Food.—Every person engaged in the business of operating a Frozen Food Locker Plant shall apply for a license therefor to the Commissioner of the Department of Agriculture, Dairy and Food in such form and shall furnish such information as he may require. Each application shall be accompanied by a fee of $3.00 for the first 100 lockers or any fraction thereof, and $1.00 for each additional 100 lockers or any fraction thereof and such sum shall be paid into the state treasury and credited to the Frozen Food Locker Plant fund, hereby created. This sum shall constitute the license fee in case license is granted. If the Commissioner shall find that the applicant maintains a proper place for the storage of frozen foods, the Commissioner shall issue to the applicant a license therefor. Such license shall expire on the 31st day of December, following 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 or from the ownership to whom issued to another ownership or from one place to another place or location. (Act Apr. 2, 1943, c. 276, §2.)
[31.185]

3827-27. Fees to be paid into State Treasury.—All fees collected hereunder by the Commissioner, together with all fines paid for the violation of this Act, shall be paid into the State Treasury and credited to the general revenue fund of the state. (Act Apr. 2, 1943, c. 276, §3.)
[31.185]

3827-28. Commissioner may withhold licenses.—The Commissioner may withhold a license from any applicant therefor under any provisions of this act whom he may deem unworthy and may revoke any license issued by him to any licensee who has violated the terms thereof, or who has failed to comply with any requirement of this act, or refused or failed to obey his lawful request or direction, and every conviction of the licensee for an offense punishable under this act shall be a sufficient ground for such revocation. (Act Apr. 2, 1943, c. 276, §4.)
[31.185]

3827-29. Commissioner to enforce provisions.—The Commissioner, his inspectors, assistants and employes, shall enforce the provisions of this Act, and in so doing shall have all the powers and authority with relation thereto that is conferred upon them and each of them by Mason's Minnesota Statutes of 1927, Section 3788 to 3873 inclusive, as amended. (Act Apr. 2, 1943, c. 276, §5.)
[31.185]

3827-30. Must meet requirements of rules and regulations.—No article of food except fruits, berries, or vegetables in containers or jars, shall be stored in any refrigerated locker unless it is in a proper condition for storage and meets all the requirements of the Minnesota Dairy and Food Laws and such rules and regulations as may be established by the Department of Agriculture, Dairy and Food, with the exception of the labelling requirements. (Act Apr. 2, 1943, c. 276, §6.)
[31.185]

3827-31. What may be stored.—Foods or goods not intended for human consumption shall not be stored in a frozen food locker plant, unless it is kept in a separate room with a separate entrance. (Act Apr. 2, 1943, c. 276, §7.)
[31.185]

3827-32. Must be inspected by plant manager.—All food except fruits, berries, or vegetables in containers or jars, must be inspected by plant manager or butcher and sharp frozen before it may be placed in a refrigerated locker, and shall be kept at a temperature of not more than 10 degrees Fahrenheit during the period it is kept therein. The date of entry of each package of food into such locker shall be stamped on each package. (Act Apr. 2, 1943, c. 276, §8.)
[31.185]

3827-33. Not warehousemen.—Persons who own or operate frozen food locker plants shall not be construed to be warehousemen, nor shall receipts or other instruments issued by such persons in the ordinary conduct of their business be construed to be negotiable warehouse receipts. (Act Apr. 2, 1943, c. 276, §9.)
[31.185]

3827-34. Lessor to have lien.—Every lessor owning or operating a frozen food locker plant or plants shall have a lien upon all property therein for the handling, keeping, and storing of the same.—(Act Apr. 2, 1943, c. 276, §10.)
[31.185]

3827-35. Enforcement of lien.—Such lien may be enforced by any remedy allowed by law for the enforcement of a lien against personal property, and such remedy shall not bar the right to recover so much of the frozen food locker plant's claim as shall not be paid by the proceeds of the sale of the property. (Act Apr. 2, 1943, c. 276, §11.)
[31.185]

3827-36. Violations and prosecutions.—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 commenced and prosecuted in the proper courts without delay for the enforcement of the penalties as in such case herein provided. (Act Apr. 2, 1943, c. 276, §12.)
[31.185]

3827-37. Violation a misdemeanor.—Any person violating or failing to comply with any of the provisions of this act, or any of the provisions of any of the rules, regulations, or rulings made and published thereunder shall be deemed guilty of a misdemeanor, and save as herein specifically provided, for each first offense shall be punished by a fine of not less than $15.00, or by imprisonment for not less than 20 days and for each subsequent offense, by a fine of not less than $50.00 or by imprisonment for not less than 60 days. (Act Apr. 2, 1943, c. 276, §13.)
[31.185]

3829. License for testing apparatus.

A person receiving sampling, weighing, and grading milk is not required to have a Babcock test license, in so far as milk is concerned, unless he actually operates a milk-testing apparatus for purpose of determining the percentage of butterfat in the milk. Op. Atty. Gen. (135b-6-f), May 20, 1943.

3832. Sanitary food law.

Rule that dog food and human food may not be stored in same showcase or refrigerator is unreasonable, unless dog food is unsanitary in fact. Op. Atty. Gen. (135b-9), Feb. 16, 1943.

3835. Commercial canneries; etc.

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

Section does not apply where products are canned by the grower for his own use or where raw products are purchased and canned for exclusive use of the purchaser as consumer, but where products are purchased and canned for use by hospitals, church societies, and schools for hot lunches, they should be supervised and inspected as "commercial canneries", and this is also true where raw products are bought by a hotel or restaurant and canned for use in feeding the public and where raw products are canned by the grower and sold as canned goods to individual consumers for their own use or to a public eating place. Op. Atty. Gen. (136d), May 21, 1943.

Community canning centers are "commercial canneries" if they produce foods for general consumption. Id.

Section is not applicable in certain cases where raw products are purchased and canned for use in school lunches at canning centers operated by schools or for schools by Parent Teachers' Associations which were previously conducted with the assistance of the Work Projects Administration. Op. Atty. Gen. (136d), June 26, 1943.

3844-1. Commercial canneries—Definitions.—The following terms whenever used in this Act, shall have the meaning as indicated:

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

(b) "Person" shall mean any individual, firm, copartnership, corporation or association.

(c) "Commercial cannery" shall mean a place or building where vegetables and/or fruits are packed in hermetically sealed cans, where sterilization by heat is used, and the products placed on the market for general consumption as human food; but shall not include private homes where farmers and/or others or state or county institutions may pack or preserve vegetables and/or fruits for their own use and make occasional sales of the surplus thereof.

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

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

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

See §§6240-18½ to 6240-18½q.

Act is unconstitutional. Op. Atty. Gen. (832j-10), Aug. 4, 1941.

3844-2. Purchase of fruits and vegetables for use in—Licenses—Bonds.—On and after April 1, 1941, no person shall buy from producers fruits or vegetables for use in a commercial cannery unless licensed by the commissioner so to do in the manner set forth in this Act. Application upon a form prescribed by the commissioner shall be made on or before March 1 in each year for the license year beginning April 1 following. The applicant shall satisfy the Commissioner of his financial responsibility in seeking to buy fruits or vegetables for use in a commercial cannery in this state. Any applicant who shall file with the commissioner a certificate under oath setting forth that the applicant has been engaged in the business of buying fruits or vegetables for use in a commercial cannery for a period of at least one year in the State of Minnesota, and that all producers from whom he has purchased fruits or vegetables except those whose accounts are in bona fide dispute or in litigation have been paid in full therefor or in lieu of such statement, shall file with the commissioner a bond with sureties approved by the commissioner in the amount of the sum of the unpaid growers accounts of the applicant for the preceding season, conditioned for the payment of such unpaid growers' accounts within a reasonable time thereafter shall, for the purposes of this Act, be deemed to be financially responsible. The Commissioner, if so satisfied, shall issue to such applicant, on payment of $10.00, a license entitling the applicant to buy fruits and vegetables for use in a commercial cannery until the 1st day of April next following. The license shall designate the location of the commercial cannery or canneries where such fruits and vegetables are to be used. The commissioner, if not satisfied with applicant's financial responsibility as in this Section provided, shall require the licensee to file with such application a good and sufficient bond drawn and executed according to the provisions of Section 3 of this Act. (Act Apr. 24, 1941, c. 398, §2.)

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

surety on any such bond shall be brought later than two years from the accrual of the cause of action thereon. (Act Apr. 24, 1941, c. 398, §3.)

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

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

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

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

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

3844-9. Violations of act.—Any person subject to the provisions of this Act who shall violate any of the provisions thereof shall be guilty of a misdemeanor. (Act Apr. 24, 1941, c. 398, §9.)

3855-1. Oleomargarine not to be colored.

There was no violation of law in selling "vegetable shortening", and with the package to sell another dish of merchandise packed in glass called "Vitamin Fortifier", though two packages mixed together made a product which resembled oleomargarine. Op. Atty. Gen. (135b-2), Dec. 29, 1942.

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

Repealed. Laws 1939, c. 441, §43.

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

MISCELLANEOUS ANIMAL FEED

3875. Statement to be affixed to packages and samples.

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

Since a tag purchased from dairy and food commissioner must be affixed to each package, commissioner is not authorized to issue a regulation to affect that for purposes of collection of inspection fee, packing case shall be regarded as the unit when case contains retail packages of dog food. Op. Atty. Gen. (135a-5), July 10, 1942.

State tag or label. Op. Atty. Gen. (135b-5), Nov. 19, 1943.

3878. Fees for registering, inspecting, etc.

Since a tag purchased from dairy and food commissioner must be affixed to each package, commissioner is not authorized to issue a regulation to affect that for purposes of collection of inspection fee, packing case shall be regarded as the unit when case contains retail packages of dog food. Op. Atty. Gen. (135a-5), July 10, 1942.

State tag or label. Op. Atty. Gen. (135b-5), Nov. 19, 1943.

3883. Articles included within terms.—The term "concentrated commercial feeding stuffs" as used in this act, shall include linseed meals, cocoanut meals, gluten feeds, gluten meals, germ feeds, corn feeds, maize feeds, starch feeds, sugar feeds, dried brewer's grains, malt sprouts, dried distiller's grains, dried beet refuse, hominy feeds; ceraline feeds, rice meals, rice bran, rice polish, peanut meals, oat feeds, corn and oat feeds, corn bran, wheat bran, wheat middlings, wheat shorts, and other mill by-products not excluded in this section, ground beef or fish scraps, dried blood, blood meals, bone meals, tankage, meat meals, slaughter house waste products; mixed feeds, clover meals, alfalfa meals and feeds, pea vine meal, cotton-seed meal, sunflower oil cake, velvet bean meal, or any other leguminous meal, mixed feeds and mixed meals made from seeds or grains and all materials of similar nature used for food for domestic animals, condimental feeds, poultry feeds, stock feeds, canned and dry dog foods, patented proprietary or trade and market stock and poultry feeds; but it shall not include straws, hays, whole seeds, unmixed meals, made directly from the entire grains of wheat, rye, barley, oats, Indian corn, buckwheat and broom corn, nor wheat flours or other cereal flours. (As amended Act Apr. 21, 1941, c. 354, §1.)

3887. Sale of screenings prohibited—Exception.—It shall be unlawful for any manufacturer, company or person to sell, offer or expose for sale, any screenings taken from any grain or seeds which shall contain any noxious or poisonous weed seeds, the viability of which has not been destroyed, provided, that nothing in this section shall be construed to restrict or prohibit the sale of screenings to each other by jobbers, manufacturers, or manipulators who mix or grind concentrated commercial feeding stuff for sale. (As amended Act Apr. 24, 1941, c. 416, §1.)

CANNED GOODS

3890. Manufacture and sale of canning compounds prohibited.

Portion of section applying to the addition, application, or use of such an adulterated canning compound in the process of canning fruits and vegetables applies only in cases where the products are intended for use by other persons and does not apply to an individual canning for his own use. Op. Atty. Gen. (136d), May 21, 1943.

3891. Possession a misdemeanor.

It is immaterial whether possession is with intent to sell to commercial food processors or the public generally. Op. Atty. Gen. (136d), May 21, 1943.

BARBITAL

3906-14. Prescriptions—Refills.

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

MILK, CHEESE AND BUTTER

3917. Use of "butter" in advertising unlawful.

One selling gelatin violated no law in advertising that it could be mixed with one pound of butter and result in two pounds of spread. Op. Atty. Gen. (135b-2), Dec. 29, 1942.

CREAM GRADING AND TESTING

3928-10. Must have licensed cream buyer.

A person receiving sampling, weighing, and grading milk is not required to have a Babcock test license, in so far as milk is concerned, unless he actually operates a milk-testing apparatus for purpose of determining the percentage of butterfat in the milk. Op. Atty. Gen. (135b-6-f), May 20, 1943.

EGGS AND EGG PRODUCTS

3935-11. Egg dealers to be licensed.

This act did not take away from city of Minneapolis, or any city, power to regulate the grading and sale of eggs. State v. Houston, 210M379, 298NW358. See Dun. Dig. 6766.

3935-14. Candling certificates.

Eggs to be shipped in interstate commerce must be candled if sale is made in Minnesota. Op. Atty. Gen. (135b-6-e), July 31, 1942.

3935-16. Department to supervise egg business.
A city ordinance requiring that all eggs sold must be graded under specified standards or be marked "unclassified" is not so unreasonable as to be an arbitrary exercise of power. State v. Houston, 210M379, 298NW358. See Dun. Dig. 6756.

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

PAINTS

3936. Linseed oil.
Adulteration of linseed oil is prohibited by statute irrespective of war production board order. Op. Atty. Gen. (135b-6-g), June 30, 1943.

POTATOES

3945-18e. Potatoes to be inspected—Fees assessed against shipper.—That all potatoes shipped by any person in carload lots from the state of Minnesota shall be inspected by an authorized federal state inspector to determine the grade, quality and condition of such shipments. All fees shall be assessed against the firm or individual that bills the shipment. Provided, however, that this act shall not apply to Minnesota grown potatoes between July 1 and October 1 of each year. (As amended Act Apr. 17, 1941, c. 292, §1.)

3945-24. Grading of apples.—The commissioner of agriculture shall annually, after due notice and public hearing of all parties affected, fix and promulgate official standards for grading and classifying all apples offered for sale in Minnesota; provided, that such grades and classes shall not conflict with any such grades or standards promulgated by the United States department of agriculture, except as producer and marketing conditions in Minnesota shall require the establishment of fewer grades than the United States department of agriculture grades. (Act Apr. 22, 1941, c. 371, §1.)
[17.30]

3945-25. Marking.—All apples offered for sale and each closed package of apples offered or exposed or packed for sale shall be plainly and conspicuously marked with a sign bearing the name and address of the grower or packer, the name of the variety, the minimum size and the grade, except that apples not in closed packages, offered for sale at retail, may be marked with a sign bearing only the name of the variety and the grade. All apples which fail to meet the requirements of any of the established Minnesota grades shall be plainly and conspicuously marked with a sign bearing the word "culls" in well proportioned letters, at least two inches in height, except that on closed packages of cull apples the sign bearing the word "culls" may be three-quarter inch in height and shall be placed on the top and side of each package. The commissioner shall exempt from the provisions of this act apples which are marked with and meet the requirements of grades of the United States department of agriculture, or well established grades promulgated by other states meeting the Minnesota requirements. (Act Apr. 22, 1941, c. 371, §2.)
[17.31]

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

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

(b) To make, publish and enforce such uniform rules and regulations as are necessary for carrying out the provisions of this act. (Act Apr. 22, 1941, c. 371, §3.)
[17.32]

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

3945-28. Not applicable to local grower or producer.—Provided however that this act shall not apply to any grower or producer when selling apples of his own production grown in Minnesota. (Act Apr. 22, 1941, c. 371, §5.)
[17.33]

3945-29. Violation, penalties.—Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor. In addition, any apples found to be offered or exposed or packed for sale in violation of this section may be ordered temporarily withdrawn from sale by the commissioner, pending either (a) informal adjustment according to law between the commissioner or his duly authorized representative, and the person in charge of the apples in question, or (b) by the filing of a formal complaint, without undue delay, with the attorney general or prosecuting attorney. (Act Apr. 22, 1941, c. 371, §6.)
[17.29]

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

AGRICULTURAL SEEDS

3957-1. Definitions.—Subdivision 1. The term "agricultural seeds" or "agricultural seed" as used in this Act shall include the seeds of field corn, wheat, oats, barley, rye, emmer, flax, hemp, sudan grass, sorghum, buckwheat, sweet clover, medium and mammoth red clover, alsike clover, white clover, alfalfa, soybeans, field peas, field beans, vetches, rape, lespedeza, mangel, sugar beet, timothy, bromus, redtop, blue grass, rye grass, sweet vernal grass, fescue, millet, oat grass, orchard grass, wheat grass, reed canary grass, bent grass, and all other seeds used for planting or sowing for agricultural and lawn purposes.

Subdivision 2. The word "kind" shall mean variety, sort or species, indicating the commonly accepted name of such seed.

Subdivision 3. The word "approximate" when referring to amounts or percentages of pure seeds, weed seeds, noxious weed seeds, inert matter and germination shall mean within the range of tolerance as hereinafter shown under tolerance.

Subdivision 4. The word "person" shall be construed to import both the plural and the singular, as the case demands and shall include corporations, copartnerships, companies, societies, firms and associations.

Subdivision 5. The word "Commissioner" means the Commissioner of Agriculture, Dairy and Food of the State or any of his agents or assistants, authorized to act for him.

Subdivision 6. The words "weed seed" shall be construed to mean the seeds and the bulblets of any and all weeds designated in Laws 1925, Chapter 377, Section 2, as amended, and such other annual, biennial and perennial plants that grow with crops raised in the field, the garden, the lawn and waste areas throughout this state, causing either damage to crops or interference with travel or other public inconvenience or injurious to public health.

Subdivision 7. The word "sell" shall be construed when applying to agricultural seed and screenings or

samples thereof as including (a) the act of selling or transferring ownership, (b) the offering or exposing for sale, exchange, distribution, giving away or transportation in this state, (c) the having in possession with intent to sell, exchange, distribute or give away the same, (d) the storing, carrying or handling in aid of traffic therein, whether done in person or through an agent, employee or others, and (e) receiving, accepting or holding on consignment for sale.

To sell seed or screenings in original or unopened containers fully, partially or not labeled shall in no manner except any such articles from necessity of full compliance with the provisions of this act.

Subdivision 8. The word "germination" shall mean a seed showing growth of a plumule (stem) or a radicle (root) or both these growths which are commonly accepted as evidence that under normal environment would produce a mature plant.

Subdivision 9. The word "Gothic caps" means the type of copy with letters the size and character as the following "TYPE".

Subdivision 10. The word "pure seed" shall mean agricultural seed exclusive of inert matter and all other seeds not of the kind of seed being considered.

Subdivision 11. The word "mixture" or "mixtures" shall mean two or more agricultural seeds intermingled in the same container, when each is in excess of five per cent by weight of the whole. Except that in the case of lawn grass the exact percentage by weight of each shall be given.

Subdivision 12. The word "screenings" shall mean chaff, sterile florets, immature seeds, weed seeds, inert matter and any other material removed in any way from any seeds in any kind of cleaning or processing, from weedy fields or obtained from any other source which contains less than 25 per cent of live agricultural seeds. (As amended Act Apr. 22, 1943, c. 576, §1.)

Effect to be given to the several acts dealing with agricultural seeds, inspection, sale, transportation, distribution, adaptation, tagging and labeling thereof, and availability of funds created to the "Seed Act Account" for use, discussed. Op. Atty. Gen. (136E), Mar. 17, 1942.

3957-2. Powers of commissioner of agriculture, etc.

Subdivision 1. * * * * *.

Subdivision 2. **Powers of Commissioner—Complaints or violations—Hearings.**—For the purpose of enforcing the provisions of this act, the commissioner shall have the authority either on his initiative or upon complaint being filed with him for any alleged violation of the provisions of this act or any rule or regulation issued thereunder, or upon information furnished by an inspector of the department of agriculture, to hold hearings and conduct such investigations as he may deem advisable. He shall have and is hereby granted full authority to issue subpoenas requiring the attendance of witnesses before him and the production of books, papers and other documents, articles or instruments and to compel the disclosure by such witnesses of all facts known to them relative to the matter under investigation. He shall have full authority to administer oaths and to take testimony; and may make a report thereon, which shall be prima facie evidence of the matters therein contained. All parties disobeying the orders or subpoenas issued hereunder by the commissioner shall be guilty of contempt as in proceedings in district courts of the state and may be punished in like manner. Neither the commissioner, the state nor any subdivision thereof shall be responsible in any manner whatsoever for any costs, expenses or fees incurred in any manner by any person appearing at any such hearing except members of the commissioner's staff and others specifically authorized by the commissioner to collect such costs, expenses or fees. (As amended Act Apr. 22, c. 576, §2.)

Subds. 3 to 7. * * * * *.

Inspection of agricultural seeds. Laws 1941, c. 472.

Subd. 8. [Repealed.]

Repealed. Laws 1943, c. 576, §3.

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

Subdivision 1. The owner or person in possession of each and every package, parcel or lot of agricultural seed as herein defined, which contains one pound or more of such agricultural seed, whether in package or in bulk, shall affix thereto in a conspicuous place on the exterior of the container of such agricultural seed a written or printed label in the English language in legible type or copy not smaller than eight point heavy Gothic caps; such label shall contain a statement specifying:

(a) The commonly accepted name of the kind or kinds of such agricultural seed; if the name of a special variety or strain of such seed is used, it must be the true name of such special variety or strain.

(b) The approximate percentage germination test made of such agricultural seed together with the date of said test of germination.

(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 repens), Canada Thistle (Carduus arvensis), Perennial Sow Thistle (Sonchus arvensis), Dodders (cuscuta spp.), Ox Eye Daisy (Chrysanthemum leucanthemum), Buckhorn Plantain (Platago lanceolata), Franchweed (thlaspi arvense) and Hoary Alyssum (Berteroa incana); 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 weed seeds so found shall appear on the label.

(d) The approximate percentage by weight of the agricultural seed exclusive of inert matter, weed seeds and of other agricultural seeds, which are distinguishable by their appearances.

(e) The name of the state and in the case of corn, except hybrid corn, the name of the county, or the country in which the seed was grown, and in the case of clovers and alfalfa seeds such seeds shall bear the coloring designated by the "federal seed act" and rules and regulations thereunder.

(f) The full name and address of the seedsman, importer, dealer or agent or other person selling, offering or exposing for sale said agricultural seed. It shall be unlawful for any person to expose seed for sale or any sample representing seed for sale for which ownership or responsibility is not acknowledged. (As amended Apr. 22, 1943, c. 576, §4.)

Subdivision 2. **Weed, seed tolerance.**—It shall be unlawful for any person to sell, or to plant in this state any agricultural seed when such agricultural seed contains or the label thereon shows a weed seed content in excess of the following limits per pound of such agricultural seeds:

(1) Ten seeds of Quack Grass (Agropyron repens), Canada Thistle (Carduus arvensis), Perennial Sow Thistle (Sonchus arvensis), singly or collectively or 25 seeds of Dodders (Cuscuta spp.), Ox Eye Daisy (Chrysanthemum leucanthemum), Buckhorn Plantain (Plantago lanceolata), Frenchweed (Thalaspi arvense) and Hoary Alyssum (Berteroa incana), singly or collectively.

(2) Two per cent by weight of all weed seeds.

(3) No seeds of Creeping Jennie (Convolvulus arvensis L.) or Leafy Spurge (Euphorbia esula), Perennial Pepper Grass (Lepidium draba), Horse Nettle (Solanum carolinense), or Austrian Field Cress (Roripa or Radicula austriaca).

(4) Any person engaged in the purchase and sale of agricultural seeds who comes into possession of seeds or samples of seeds containing seeds of weeds named in paragraph 3 of this section shall report to the State Department of Agriculture, Dairy and Food

the name and address of the person from whom such seeds or seed samples were received. (As amended Mar. 28, 1941, c. 75, §1; Apr. 22, 1943, c. 576, §5.)

Subdivision 3. **Commissioner to fix weed, seed content allowance.**—The commissioner may fix by permit in writing the weed seed content allowable for each individual case of any agricultural seeds, when in his judgment the character of such seeds preclude the removal of certain weed seeds to be named by the commissioner, by reasonably well equipped and properly operated seed cleaning machinery to the weed seed limits as herein defined.

Whenever such permit is issued by the commissioner the label of any such seed shall bear in addition to the actual amount of weed seed contained therein, a statement in eight point Gothic or larger type that such seed contains weed seed in excess of the legal limit by special permit of the Commissioner of Agriculture, Dairy and Food giving the date thereof. (As amended Mar. 28, 1941, c. 75, §1; Apr. 22, 1943, c. 576, §§4, 5, 8.)

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

3957-3a. Weed, seed tolerance.—The following tolerances as provided by the Federal Seed Act shall be allowed between the percentages or rates of occurrence found by analysis, test or examination of the seed, and percentages or rates of occurrence allowed by this act. Purity Tolerance—To determine the tolerance of percentage of pure seed, weed seeds and inert matter, the sample shall be considered as made up of two parts (a) the percentage of the component (Pure Seed, weed seeds or inert matter) being considered, and (b) the difference between that percentage and 100. The resulting number is then multiplied by 0.2 (2/10) and the result—product added to 0.2 or 0.6 as follows:

$$\text{Pure seed tolerance} = 0.6 + \left(0.2 \times \frac{a \times b}{100}\right)$$

$$\text{Weed seed and inert matter tolerance} = 0.2 + \left(0.2 \times \frac{a \times b}{100}\right)$$

Grass of Poa, Agrostis and Festuca species shall be allowed additional tolerance as provided by the Federal Seed Act. Germination and germination plus hard seed tolerances shall be:

5% for seed testing 96% or more; 6% for seed testing 90 to 95%; 7% for seed testing 80 to 89%; 8% for seed testing 70 to 79%; 9% for seed testing 60 to 69%; 10% for seed testing less than 60%. Tolerances of noxious weed seeds shall be as given in the Federal Seed Act except no tolerance shall be allowed for Creeping Jennie and Leafy Spurge. (Act Apr. 22, 1943, c. 576, §6.)

[21.031]

3957-3b. Sale of screenings unlawful—Exceptions.—It shall be unlawful for any person to sell to the consumer or to feed any screenings of any name or nature from threshing machines, hullers, seed cleaners, weedy fields or from any other source that have not been devitalized by grinding sufficiently fine to destroy all weed seeds or otherwise devitalize them or scatter on the ground any such screenings, except that dealers who are not equipped with the necessary machinery and facilities to thoroughly devitalize screenings, may sell screenings to consumers unground and undevitalized for feeding purposes upon written permit from the commissioner of agriculture, dairy and food, provided the consumer has the necessary machinery and facilities to thoroughly devitalize said screenings before feeding. (Act Apr. 22, 1943, c. 576, §7.)

[21.032]

3957-21. Hybrid seed corn—What constitutes.

Effect to be given to the several acts dealing with agricultural seeds, inspection, sale, transportation, distribution, adaptation, tagging and labeling thereof, and availability of funds created to the "Seed Act Account" for use, discussed. Op. Atty. Gen. (136E), Mar. 17, 1942.

Statute does not prevent a seed dealer from selling a variety of hybrid corn anywhere in Minnesota, if tag or label states correct number of "days to mature" in section in Minnesota where such corn is intended to be grown, even though number of days exceeds 120, which is number of days established as prescribed by law as approximate number of days growing season required for corn from emergence of corn plant above ground *after planting to maturity, and providing further that* tags or labels comply with other requirements of act. Op. Atty. Gen. (136E), Mar. 18, 1942.

3957-22. Sale of hybrid seed corn—Label.—It shall be unlawful for any person to sell, within the state, as the word "sell" is defined in the Pure Seeds Act, any seed corn as "hybrid" unless the said seed answers to and complies with the definition of hybrid seed corn contained in Mason's Supplement 1940, Setcion 3957-21, as amended; and unless there is attached to each sack, bag, or other container of such corn a label specifying that the corn contained therein is the product of either a single cross, a three-way cross or a double cross, or a blend of these, as the case may be; and said label shall give the state in which said hybrid seed corn was grown, and the variety and state approximately the number of days, as determined by the Minnesota Experiment Station, as hereinafter provided, of growing season necessary from emergence of the corn plant of said variety above the ground to maturity in the zone or zones in Minnesota to which said variety is adapted. (As amended Apr. 16, 1941, c. 280, §1; Apr. 6, 1943, c. 313, §1.)

Tag on hybrid seed corn must state the variety, though it may contain the name of the brand also. Op. Atty. Gen. (833f), Dec. 18, 1943.

3957-23. The Agricultural Experiment Station to establish corn growing zones.—It shall be the duty of the director of the Agricultural Experiment Station of the University of Minnesota to determine, establish and number or otherwise identify, corn growing zones of the state and to determine and publish for each zone so established the approximate number of days growing season necessary for corn from emergence of the corn plants above ground after planting to maturity. (As amended Apr. 6, 1943, c. 313, §2.)

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

Subdivision 1. **Record of hybrid seed corn varieties.**—A record of each hybrid seed corn variety including the zone in Minnesota to which it is adapted shall be filed by February 1 of each year by the originator or owner thereof with the commissioner of agriculture, dairy and food, and for each such filing he shall collect a fee of $2.00. Annually thereafter he shall issue a renewal of such filing for a fee of $1.00. Said fees shall be deposited with the state treasury as other departmental receipts are deposited and shall constitute and be a part of the separate account known as the "seed act account" created by Mason's Minnesota Statutes of 1927, Sections 3957-1 to 3957-12, inclusive, as amended.

Subdivision 2. After the filing of any variety, the director shall test the same for one year and annually thereafter at his discretion in the appropriate zones and determine the number of days necessary for maturity.

Subdivision 3. No variety of hybrid seed corn shall be sold in Minnesota for which the number of days required for maturity has not been determined by the director of the agricultural experiment station by not less than one year's test; provided, that the commissioner of agriculture, dairy and food, with the approval of the director of the agricultural experiment station, may waive for one growing season the requirement of state testing as to new varieties of hybrid seed corn not previously sold in the state, if satisfied as to the correctness of the rating placed thereon by the originator or owner. Provided further that no variety shall be barred from sale for which one year's test has been conducted by the experiment sta-

tion and which has been properly filed with the Commissioner.

Subdivision 4. The commissioner of agriculture, dairy and food is hereby charged with the duty and responsibility of enforcing the provisions of this act.

Subdivision 5. The provisions and requirements of this law do not alter, or nullify the labeling requirements of the Pure Seeds Act, but are in addition thereto. (As amended Apr. 16, 1941, c. 280, §2; Apr. 6, 1943, c. 313, §3.)

Tag on hybrid seed corn must state the variety, though it may contain the name of the brand also. Op. Atty. Gen. (833F), Dec. 18, 1943.

3957-26. Effective August 1, 1943.—This act shall take effect and be in force from and after the first day of August, 1943. (As amended Apr. 6, 1943, c. 313, §4.)

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

The term "agricultural seeds" or "agricultural seed" as used in this Act shall include the seeds of field corn, wheat, oats, barley, rye, emmer, flax, sudan grass, sorghum, buckwheat, sweet clover, medium and mammoth red clover, alsike clover, white clover, alfalfa, soy beans, field peas, field beans, vetches, rape, timothy, bromus, redtop, Kentucky blue grass, Canadian blue grass, rye grass, sweet vernal grass, fescue, millet, oat grass, orchard grass, wheat grass and all other seeds used for planting or sowing for agricultural and lawn purposes and shall be construed to mean such seed when sold, offered or exposed for sale or had in possession with intent to sell or as a sample representing any lot of seed elsewhere stored and for sale within this state for purposes of sowing or planting.

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

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

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

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

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

The word "sell", "person", "approximate", "germination", "kinds", "pure seeds", "mixtures", "screenings", etc., shall refer to and mean such definitions as given in section 1, chapter 387, session laws of 1927, commonly known and referred to as the Pure Seeds Act. (As amended Apr. 26, 1941, c. 472, §1; Apr. 9, 1943, c. 352, §1.)

Effect to be given to the several acts dealing with agricultural seeds, inspection, sale, transportation, distribution, adaptation, tagging and labeling thereof, and availability of funds created to the "Seed Act Account" for use, discussed. Op. Atty. Gen. (136E), Mar. 17, 1942.

3957-28. Tags and labels.—(a) For the purposes of defraying the costs of inspection of agricultural seeds in this state, the commissioner shall furnish tags or labels in form and character as shall be adequate for the purposes and in the manner hereinafter described.

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

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

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

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

(e) The commissioner of agriculture, dairy and food is hereby authorized and it shall be his duty to administer and enforce this act and to that end he may promulgate and enforce such regulations as in his judgment shall be necessary; he shall investigate the sale, transportation, distribution and adaptation of agricultural seeds in Minnesota, as provided by the Pure Seeds Act, Laws 1927, Chapter 387, and subsequently amended, and the Hybrid Seed Corn Act, Laws 1939, Chapter 106, as amended by Laws 1941, Chapter 280. He shall employ such agents and assistants as are necessary to execute the requirements of this act, none of whom, except those who are employed on a regular or full-time basis, shall come within or be governed by the provisions of the act creating the Department of Civil Service or any amendments thereof, and fix their compensation. He shall have the authority to publish information, records, etc., relative to the administration and records pertaining to the work performed under this act.

Any person violating any of the provisions of this act shall be guilty of a misdemeanor.

(f) All fees and moneys collected from the sale of tags or labels herein referred to shall be deposited in the state treasury as other departmental receipts are deposited, and shall be credited to and become a part of the "Seed Act Account" created by Mason's Supplement 1940, Section 3957-2, Subdivision 1, for the purpose of defraying the expenses of administrating and enforcement of this act, the Hybrid Seed Corn Act, and the Pure Seeds Act, as amended. (As amended Apr. 26, 1941, c. 472, §2; Apr. 9, 1943, c. 352, §2.)

Moneys collected from sale of tags may be used by the department for administration and operation of the act, notwithstanding Laws 1941, c. 548, §48, providing that income from whatever source should be paid into the general fund. Op. Atty. Gen. (833f), July 28, 1941.

Seeds must be tagged which are sold by persons not growing them on their own farms, and it is immaterial whether or not such product is advertised in a local or farm paper, or whether price of product is quoted. Op. Atty. Gen. (833f), Dec. 10, 1941.

State institutions purchasing seeds are not exempt from paying tax tag cost, being merely one element of total cost of seed. Op. Atty. Gen. (136E), Mar. 20, 1942.

Money collected by Commissioner of Agriculture from dealers who sold seed without tags does not necessitate issuance of tags after sale is made. Op. Atty. Gen. (833f), July 24, 1943.

3957-29. Effective date of act. [Repealed.]

Repealed. **Laws 1943, c. 352, §3.**

3957-29. Law repealed.—Laws 1941, Chapter 472, Section 3, is hereby repealed. (Act of Apr. 9, 1943, c. 352, §3.)

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

[21.102]

SOFT DRINKS AND OTHER NON-ALCOHOLIC BEVERAGES

3965-1. Licenses required for manufacture of, etc.

Bottler's license is not required of retail establishment selling beverages by the drink, though they carbonate water in quantities greater than one quart to be drawn off and mixed with syrup. Op. Atty. Gen. (634b), July 22, 1941.

3965-3. Definitions of soft drinks.

Chocolate flavored milk beverage manufactured and sold by dairies falls within terms "soft drinks" and "beverages." Op. Atty. Gen. (634), Sept. 23, 1941.

3965-20. Same—Licensee shall not display federal retail tax stamp—Violation a misdemeanor.
Injunction as remedy against a club continuously violating liquor and gaming laws. State v. Sportsmen's Country Club, 214M151, 7NW(2d)495. See Dun. Dig. 4483c.

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

CHAPTER 21A

Regulation of Manufactures and Sales

3976-7. Sales forbidden—Exceptions.
Device of giving a mattress away to purchaser of a bed, or some other article, at an auction of second-hand furniture, would not constitute any defense to a charge of selling a second-hand unsterilized mattress. Op. Atty. Gen. (270i), Feb. 24, 1942.
Statute applies to sale of bedding at auction of household goods. Op. Atty. Gen. (270i), Aug. 19, 1943.

3976-17. Violation is a misdemeanor.
No obligation to return fees paid before law was repealed. Op. Atty. Gen. (201a-4), Aug. 2, 1943.

SALE OF FIREWORKS

3976-17a. Definition of term "fireworks."—As used in this act the term "fireworks" means any substance or combination of substances or article prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration or detonation, and includes blank cartridges, toy cannons, and toy canes in which explosives are used, the type of balloons which require fire underneath to propel them, firecrackers, torpedoes, sky rockets, roman candles, daygo bombs, sparklers, or other fireworks of like construction and any fireworks containing any explosive or inflammable compound, or any tablets or other device containing any explosive substance and commonly used as fireworks. The term "fireworks" shall not include toy pistols, toy guns, in which paper caps containing 25 hundredths grains or less of explosive compound are used and toy pistol caps which contain less than 20 hundredths grains of explosive mixture. (Act Apr. 8, 1941, c. 125, §1.)
[616.433]

3976-17b. Sale or use prohibited.—Except as otherwise provided in this act, it shall be unlawful for any person to offer for sale, expose for sale, sell at retail, or use or explode any fireworks. (Act Apr. 8, 1941, c. 125, §2.)
[616.434]

3976-17c. Display—Permits.—This act shall not prohibit supervised public displays of fireworks by cities, villages, and boroughs, fair associations, amusement parks, and other organizations. Except when such display is given by a municipality or fair association within its own limits, no display shall be given unless a permit therefor has first been secured. Every application for such a permit shall be made in writing to the municipal clerk at least 15 days in advance of the date of the display. The application shall be promptly referred to the chief of the fire department who shall make an investigation to determine whether the operator of the display is competent and whether the display is of such a character and is to be so located, discharged or fired that it will not be hazardous to property or endanger any person. The fire chief shall report the results of this investigation to the clerk and if he reports that in his opinion the operator is competent and that the display as planned will conform to safety requirements, including the rules and regulations of the state fire marshal hereinafter provided for, the clerk shall issue a permit for the display when the applicant pays a permit fee of two dollars. When the supervised public display for which a permit is sought to be held outside the limits of an incorporated municipality, the application shall be made to the county auditor and the duties imposed by this act upon the clerk of the municipality shall be performed in such case by the county auditor. The duties imposed on the fire chief of the municipality by this act shall be performed in such case by the county sheriff. After such permit shall have been granted, sales, possession, use and distribution of fireworks for such display shall be lawful for that purpose only. No permit granted hereunder shall be transferable. The state fire marshal shall adopt reasonable rules and regulations not inconsistent with the provisions of this act to insure that fireworks displays are given safely. (Act Apr. 8, 1941, c. 125, §3.)
[616.435]

3976-17d. Selling at wholesale—Illumination or ceremonial purposes.—Nothing in this act shall be construed to prohibit any resident wholesaler, dealer, or jobber, from selling at wholesale such fireworks as are not herein prohibited; or the sale of any kind of fireworks for shipment directly out of the state; or the use of fireworks by airplanes and railroads, or other transportation agencies for signal purposes or illumination; or the sale or use of blank cartridges for a show or theatre, or for signal or ceremonial purposes in athletics or sports, or for use by military organizations. (Act Apr. 8, 1941, c. 125, §4.)
[616.436]

3976-17e. State fire marshal or sheriff to seize all stock.—The state fire marshal or any sheriff, police officer, constable, or local fire marshal shall seize, take, remove or cause to be removed at the expense of the owner all stocks of fireworks or combustibles offered or exposed for sale, stored, or held in violation of this act. (Act Apr. 8, 1941, c. 125, §5.)
[616.437]

3976-17f. Offense.—Any person violating the provisions of this act shall be guilty of a misdemeanor. (Act Apr. 8, 1941, c. 125, §6.)
[616.438]

3976-17g. Effective date.—This act shall take effect and be in force from August 1, 1941. (Act Apr. 8, 1941, c. 125, §7.)

SALE OF EXPLOSIVES

3976-17h. Definitions. [Repealed.]
Repealed. Laws 1943, c. 34.
Purpose of act, in addition to being a safety measure, is to have a definite record kept of all sales and possession of every kind of explosives, with specified exceptions. Op. Atty. Gen. (201A-4), July 24, 1941.
Compliance with state law should be had, as well as compliance with any federal law on subject. Op. Atty. Gen. (201A-4), Mar. 9, 1942.
Farmers purchasing sodium chlorate to be used for weed eradication need not secure license. Op. Atty. Gen. (201a-4), Apr. 28, 1942.
No license is necessary under state law where a farmer is buying sodium chlorate for weed eradication, but a license is necessary under the federal law, at a cost of twenty-five cents. Op. Atty. Gen. (201a-4), May 5, 1942. (e).
Op. Atty. Gen. (201A-4), July 24, 1941; note under §3976-17k.
Term "municipality" means any duly incorporated city, village, or borough, and the sheriff of Hennepin County is the licensing authority for any territory outside of such city, village, or borough. Op. Atty. Gen. (201a-4), July 17, 1941.

3976-17i. Explosives—Manufacture—License. [Repealed.]
Repealed. Laws 1943, c. 34.
County agents distributing explosives for use in land clearing are not required to have a license. Op. Atty. Gen. (201a-4), June 27, 1941.