

CHAPTER 32

BUTTER, CHEESE, CREAM, AND MILK

32.09 CREAMERIES, CHEESE FACTORIES, CONDENSERIES, MILK PLANTS, CREAM STATIONS.

Licenses issued under sections-32.09 and 32.23 do not lapse upon the death of the licensee but pass to the legally appointed representative who continues to operate the business. OAG Oct. 30, 1946 (292-C).

Constitutionality under the police power of a statute requiring a license and bond of commission milk dealers. 15 MLR 339.

32.11 DISCRIMINATION IN BUYING PROHIBITED.

Section 32.11 forbidding one engaged in the business of buying milk, cream or butterfat for manufacture or for sale from discriminating between different localities by purchasing at a higher price in one locality than he pays in another, due allowance being made for cost of transportation, does not violate either the equality or the liberty of contract of state or federal constitution. *State v Fairmont Cry. Co.* 162 M 146, 202 NW 714.

Constitutionality of the unfair practices act. **Sales below cost only.** Arizona, Connecticut, Maine, Maryland, New Hampshire, New Jersey, Pennsylvania, Rhode Island, Tennessee, Virginia, West Virginia (11).

Price discrimination only: Delaware, Florida, Mississippi, Missouri, South Dakota, Vermont (6).

Both: Arkansas, California, Colorado, Idaho, Kansas, Kentucky, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, North Dakota, Oklahoma, Oregon, South Carolina, Utah, Washington, Wisconsin, Wyoming (19).

2 C. C. H. Trade Regulation Service (9th Ed. 1944) 7503. Par. 8000 et seq.

The history of the Minnesota legislation on the subjects of locality price discrimination and sales below cost has been turbulent. A statute prohibiting locality discrimination in the dairy business, Laws 1921, c. 305, G.S. 1923, s. 3907, was held unconstitutional in *Fairmont Creamery Co. v Minnesota*, (1927) 274 US 1, 47 S.C. 506, 71 L. Ed. 893. A contemporaneous statute, Laws 1921, c. 413, G. S. 1923, ss. 10464 to 10467, prohibiting locality discrimination generally was repealed by Laws 1937, c. 116. The 1937 act was held unconstitutional in part in *Great Atlantic & Pacific Tea Co. v Ervin*, (D. C. Minn. 1938) 23 F. Supp. 70. Next the legislature in order to correct the constitutional defects pointed out in the Ervin case amended the 1937 act by Laws 1939, c. 403, codified as Mason's 1927 Minn. Stat. 1940 Supp., ss. 3976-37 to 3976-49. The 1939 act was interpreted in *McElhone v Geror*, (1940) 207 Minn. 580, 292 NW 414, and in *McFadden Lambert Co. v Winston & Newell Co.*, (1941) 209 Minn. 245, 296 N. W. 18. Still another act was passed, Laws 1941, c. 326, codified as Minn. Stat. 1941, ss. 325.01 to 325.07, ss. 325.48, 325.49, and 325.52, to clarify uncertainties brought to light by those cases. 30 MLR 559.

32.19 REPORTS REQUIRED; CONTENTS.

Amended by L. 1947, c. 290, s. 1.

32.21 MILK AND CREAM.

Power of a municipality to exclude sale of milk from outside plants under municipal health ordinance. 18 MLR 841.

32.211 STANDARDS OF MILK AND MILK PRODUCTS.

Power of a municipality to exclude sale of milk from outside plants under municipal health ordinance. 18 MLR 841.

32.23 SALES LICENSED.

Where a druggist had a state license under provisions of section 157.03 and a village license authorizing sale of soft drinks at retail, he did not require another license under an ordinance similar to section 32.23 in order to use milk as an ingredient in his mixed soft drinks. OAG May 8, 1946 (292-C).

Licenses issued under sections 32.09 and 32.23 do not lapse upon the death of the licensee but pass to the legally appointed representative who continues to operate the business. OAG Oct. 30, 1946 (292-C).

Government and its relationship to price standards in the milk industry. 22 MLR 789.

Validity of contracts made in violation of license laws. 22 MLR 1058.

32.25 MILK AND CREAM SOLD BY WEIGHT.

Amended by L. 1947, c. 461, s. 1.

Power of congress to regulate intrastate commerce under the agricultural marketing agreement act. 26 MLR 746.

32.281 CHEESE DEFINED.

HISTORY. L. 1947, c. 184, s. 1.

32.282 MANDATORY PROCESS PROVISIONS.

HISTORY. L. 1947, c. 184, s. 2.

32.283 STATEMENT BY MANUFACTURER.

HISTORY. L. 1947, c. 184, s. 3.

32.284 ENFORCEMENT.

HISTORY. L. 1947, c. 184, s. 4.

32.285 VIOLATIONS; PENALTIES.

HISTORY. L. 1947, c. 184, s. 5.

32.30 LOCAL INSPECTION.

However desirable, economical, and beneficial it might be for the city of Breckenridge to enter into a contract with six North Dakota cities for cooperative milk inspection service, until the legislature sees fit to grant such power to said municipality, the authorities are without power to enter into such contract. 1942 OAG 237, Dec. 29, 1941 (292-B).

32.31 BUTTERFAT CONTENT OF BUTTER.

Amended by L. 1947, c. 104, s. 1.

32.35 ACCOUNTANT EMPLOYED.

Repealed by L. 1947, c. 55, s. 1.

32.38 DAIRY PRODUCTS; PRESERVATIVES.

Analysis by the state chemist was adequate proof of lard in the butter, and the quality and value of the butter reduced. State v Eidsvold, 156 M 27, 194 NW 17.

32.39 PASTEURIZED MILK AND CREAM.

Repealed by L. 1947, c. 104, s. 2.

32.391 MILK; PASTEURIZATION.

The provisions of section 144.14 are not affected by L. 1945, c. 384. OAG July 12, 1945 (292-F).

Generally L. 1945, c. 384, do not limit the state board of health in their laboratory examinations, or in their distribution of health information, and the state board may continue to cooperate with municipal officials in supervision of milk supplies and products as authorized by section 144.05. OAG July 12, 1945 (292-F).

32.392 APPROVAL OF PLANT REQUIRED.

While the duty of examining plans and specifications for construction and modification of plants has been imposed upon the commissioner of agriculture, dairy and food, the state board of health is not restricted in the performance of its statutory duties in protection of the public health. OAG July 12, 1945 (292-F).

L. 1945, c. 384, is not applicable to creameries pasteurizing milk or cream used solely for the purpose of manufacturing butter and cheese. OAG Nov. 25, 1946 (292-F).

32.48 LABELING CERTAIN BUTTER COMPOUNDS.

Repealed by L. 1947, c. 275, s. 1.

32.491 MILK STANDARDS; ENFORCEMENT.

HISTORY. L. 1947, c. 396, s. 1.

32.50 VIOLATIONS; PENALTIES.

An action by a butter manufacturing company to enjoin the carriers from complying with, and the attorney general from enforcing the provisions of L. 1913, c. 433, relating to shipment of cream, is essentially one to enjoin prosecution of criminal actions not maintainable as to any of the defendants. Milton Dairy v Gt. Northern, 124 M 239, 144 NW 764.