

CHAPTER 28A

LICENSING FOOD HANDLERS

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

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

History: 1971 c 339 s 1

28A.02 DECLARATION OF POLICY.

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

History: 1971 c 339 s 2; 1985 c 248 s 70

28A.03 DEFINITIONS.

Subdivision 1. **Scope.** The definitions in this section apply to sections 28A.01 to 28A.16.

Subd. 2. **Commissioner.** "Commissioner" means the commissioner of agriculture.

Subd. 3. **Person.** "Person" means any individual, firm, corporation, company, association, cooperative, or partnership and includes any trustee, receiver, assignee, or other similar representative thereof.

Subd. 4. **Place of business.** "Place of business" means every location where food or food items are manufactured, processed, sold, stored, or handled, including buildings, locations, permanent or portable structures, carnivals, circuses, fairs, or any other permanent or temporary location.

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

Subd. 5. **Food.** "Food" includes every article used for, entering into the consumption of, or used or intended for use in the preparation of food, drink, confectionery, or condiment for humans, whether simple, mixed or compound.

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

(b) "Readily perishable food" is food or a food ingredient consisting in whole or in part of milk, milk products, eggs, meat, fish, poultry or other food or food ingredient which is

capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms.

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

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

(e) "Nonperishable food" is food described in paragraph (d) with a shelf life of more than 90 days.

Subd. 6. Sell; sale. "Sell" and "sale" include the keeping, offering, or exposing for sale, use, transporting, transferring, negotiating, soliciting, or exchange of food, the having in possession with intent to sell, use, transport, negotiate, solicit, or exchange the same and the storing, or carrying thereof in aid of traffic therein whether done or permitted in person or through others.

Subd. 7. Principal mode of business. "Principal mode of business" means that type of business described under paragraph (a), (b), (c) or (d) in section 28A.05 within which category the greatest amount of the applicant's food business lies.

Subd. 8. Custom processor. "Custom processor" means a person who slaughters animals or processes noninspected meat for the owner of the animals, and returns the meat products derived from the slaughter or processing to the owner. "Custom processor" does not include a person who slaughters animals or poultry or processes meat for the owner of the animals or poultry on the farm or premises of the owner of the animals, meat, or poultry. For the purpose of this clause, "animals" or "meat" do not include poultry or game animals or meat derived therefrom.

Subd. 9. Major violations. "Major violation" includes conditions that cause food products to become adulterated, as defined in section 31.121, or fraudulently misbranded, as defined in section 31.123.

History: 1971 c 339 s 3; 1975 c 412 s 9; 1977 c 160 s 1; 1978 c 502 s 1; 1983 c 300 s 3; 1986 c 444; 1995 c 220 s 42; 1996 c 407 s 17

28A.04 LICENSE REQUIRED; CUSTOM PROCESSING PERMIT APPLICATIONS; RENEWALS.

Subdivision 1. Application; date of issuance. No person shall engage in the business of manufacturing, processing, selling, handling, or storing food without having first obtained from the commissioner a license for doing such business. Applications for such license shall be made to the commissioner in such manner and time as required and upon such forms as provided by the commissioner and shall contain the name and address of the applicant, address or description of each place of business, and the nature of the business to be conducted at each place, and such other pertinent information as the commissioner may require.

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

Subd. 2. Custom processing permit. In addition to the license requirements set forth in subdivision 1, every custom processor shall obtain a custom processing permit. Application for a permit shall be made on forms provided by the commissioner. The commissioner shall cause the custom processor's place of business to be inspected and if the commissioner finds that the applicant's place of business complies with state standards relating to meat process-

ing plants, a custom processing permit shall be issued to the applicant. No additional fee shall be charged for a custom processing permit.

History: 1971 c 339 s 4; 1975 c 412 s 10; 1977 c 160 s 2; 1996 c 407 s 18

NOTE: The amendment to subdivision 1 by Laws 1996, chapter 407, section 18, is effective April 1, 1997, and applies to licenses issued for mobile food concession and retail mobile units beginning with the April 1, 1997, to March 31, 1998, period. License fees for the nine-month period July 1, 1996, to March 31, 1997, will be prorated at 75 percent of the fee schedule in effect on July 1, 1996, rounded to the nearest dollar. Laws 1996, chapter 407, section 57.

28A.05 CLASSIFICATION.

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

(a) Retail food handlers are persons who sell or process and sell food directly to the ultimate consumer or who custom process meat or poultry. The term includes a person who sells food directly to the ultimate consumer through the use of coin actuated vending machines, and a person who sells food for consumption on-site or off-site if the sale is conducted on the premises that are part of a grocery or convenience store operation.

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

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

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

History: 1971 c 339 s 5; 1974 c 2 s 1; 1975 c 412 s 11; 1986 c 375 s 1; 1986 c 444; 1991 c 52 s 1

28A.06 EXTENT OF LICENSE.

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

History: 1971 c 339 s 6

28A.065 LICENSE REQUIREMENTS FOR A CARNIVAL, CIRCUS, OR FAIR.

No person whose place of business is a carnival, circus, or fair and who holds a license pursuant to this chapter or chapter 157 shall be required to obtain any additional license or permit pursuant to the provisions of an ordinance or rule of a political subdivision in order to engage in any aspect of food handling or to operate a restaurant.

This section does not exempt the person from compliance with the provisions of chapters 37 and 38, any sanitation, public health or zoning ordinance, privilege license requirements or other rule of the fair or political subdivision having jurisdiction over the area in which the carnival, circus, or fair is conducted.

History: 1982 c 625 s 1; 1985 c 248 s 70

28A.07 ISSUANCE OF LICENSE.

Prior to the issuance or renewal of any license herein, the commissioner may cause appropriate inspections to be made to determine under applicable statutory and promulgated

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	immediately previous license or fiscal year	\$787	\$150	\$300
	(g) Having over \$10,000,000 gross sales for the immediately previous license or fiscal year	\$899	\$200	\$350
2.	Wholesale food handler			
	(a) Having gross sales or service of less than \$25,000 for the immediately previous license or fiscal year	\$ 50	\$ 15	\$ 15
	(b) Having \$25,000 to \$250,000 gross sales or service for the immediately previous license or fiscal year	\$225	\$ 50	\$100
	(c) Having \$250,000 to \$1,000,000 gross sales or service from a mobile unit without a separate food facility for the immediately previous license or fiscal year	\$337	\$ 75	\$150
	(d) Having \$250,000 to \$1,000,000 gross sales or service not covered under paragraph (c) for the immediately previous license or fiscal year	\$449	\$100	\$200
	(e) Having \$1,000,000 to \$5,000,000 gross sales or service for the immediately previous license or fiscal year	\$562	\$125	\$250
	(f) Having over \$5,000,000 gross sales for the immediately previous license or fiscal year	\$647	\$150	\$300
3.	Food broker	\$112	\$ 30	\$ 50
4.	Wholesale food processor or manufacturer			
	(a) Having gross sales of less than \$250,000 for the immediately previous license or fiscal year	\$310	\$ 75	\$150
	(b) Having \$250,000 to \$1,000,000 gross sales for the immediately previous license or fiscal year	\$449	\$100	\$200
	(c) Having \$1,000,000 to \$5,000,000 gross sales for the immediately previous license or fiscal year	\$562	\$125	\$250
	(d) Having over \$5,000,000 gross sales for the immediately previous license or fiscal year	\$647	\$150	\$300
5.	Wholesale food processor of meat or poultry products under supervision of the U. S. Department of Agriculture			
	(a) Having gross sales of less than \$250,000 for the immediately previous license or fiscal year	\$169	\$ 50	\$ 75
	(b) Having \$250,000 to \$1,000,000 gross sales for the immediately previous license or fiscal year	\$253	\$ 75	\$125
	(c) Having \$1,000,000 to \$5,000,000 gross sales for the			

	immediately previous license or fiscal year	\$310	\$ 75	\$150
	(d) Having over \$5,000,000 gross sales for the immediately previous license or fiscal year	\$366	\$100	\$175
6.	Wholesale food manufacturer having the permission of the commissioner to use the name Minnesota Farmstead cheese	\$ 30	\$ 10	\$ 15
7.	Nonresident frozen dairy manufacturer	\$200	\$ 50	\$ 75
8.	Wholesale food manufacturer processing less than 70,000 pounds per year of cultured dairy food as defined in section 32.486, subdivision 1, paragraph (b)	\$ 30	\$ 10	\$ 15
9.	A milk marketing organization without facilities for processing or manufacturing that purchases milk from milk producers for delivery to a licensed wholesale food processor or manufacturer	\$ 50	\$ 15	\$ 25

History: 1971 c 339 s 8; 1975 c 412 s 12; 1977 c 114 s 2; 1981 c 356 s 266; 1983 c 293 s 53; 1987 c 396 art 11 s 4; 1991 c 254 art 3 s 15; 1992 c 513 art 2 s 17; 1995 c 220 s 43; 1996 c 407 s 19

28A.085 REINSPECTION FEES.

Subdivision 1. **Violations; prohibited acts.** The commissioner may charge a reinspection fee for each reinspection of a food handler that:

(1) is found with a major violation of requirements in chapter 28, 29, 30, 31, 31A, 32, 33, or 34, or rules adopted under one of those chapters;

(2) is found with a violation of section 31.02, 31.161, or 31.165, and requires a follow-up inspection after an administrative meeting held pursuant to section 31.14; or

(3) fails to correct equipment and facility deficiencies as required in rules adopted under chapter 28, 29, 30, 31, 31A, 32, or 34. The first reinspection of a firm with gross food sales under \$1,000,000 must be assessed at \$25. The fee for a firm with gross food sales over \$1,000,000 is \$50. The fee for a subsequent reinspection of a firm for the same violation is 50 percent of their current license fee. The establishment must be issued written notice of violations with a reasonable date for compliance listed on the notice. An initial inspection relating to a complaint is not a reinspection.

Subd. 2. **Market withdrawal; food safety emergency.** A food handler that requires a reinspection due to adulteration or misbranded foods that result in a food being recalled from commerce may be assessed for reasonable and direct reinspection costs incurred by the commissioner, including personnel, travel, laboratory analysis, and attorney general costs. Reinspection related to floods, earthquakes, storms, accidental fires, and power outages are excluded. The commissioner, upon request of the food handler, shall provide, within a reasonable time, an estimate of the anticipated cost for resolving the food safety emergency.

Subd. 3. **Manner and timing of payment.** Unless an appeal is filed under subdivision 5, a food handler must pay all fees and assessments in the manner and timing requested by the commissioner. If a timely appeal is requested, the fees and assessments are stayed until a decision on the appeal is issued by the hearing officer. A license may not be renewed until all fees and penalties under this chapter are paid.

Subd. 4. **Deposit; appropriation.** All reinspection fees and assessments collected must be deposited in the state treasury and are credited to an account in the special revenue fund.

Money in the account, including interest accrued, is appropriated to the commissioner to pay the expenses relating to reinspections conducted under the chapters listed in subdivision 1.

Subd. 5. **Appeals.** Food handlers may appeal reinspection fees and assessments to the department hearing officer within 30 days of receipt of the notice of fee assessment. The appeal must be submitted to the commissioner in writing.

History: 1995 c 220 s 44

28A.09 INSPECTION FEES FOR VENDING MACHINES.

Subdivision 1. **Annual fee; exceptions.** Every coin-operated food vending machine is subject to an annual state inspection fee of \$15 for each nonexempt machine except nut vending machines which are subject to an annual state inspection fee of \$5 for each machine, provided that:

(a) Food vending machines may be inspected by either a home rule charter or statutory city, or a county, but not both, and if inspected by a home rule charter or statutory city, or a county they shall not be subject to the state inspection fee, but the home rule charter or statutory city, or the county may impose an inspection or license fee of no more than the state inspection fee. A home rule charter or statutory city or county that does not inspect food vending machines shall not impose a food vending machine inspection or license fee.

(b) Vending machines dispensing only gum balls, hard candy, unsorted candy, or ice manufactured and packaged by another shall be exempt from the state inspection fee, but may be inspected by the state. A home rule charter or statutory city may impose by ordinance an inspection or license fee of no more than the state inspection fee for nonexempt machines on the vending machines described in this paragraph. A county may impose by ordinance an inspection or license fee of no more than the state inspection fee for nonexempt machines on the vending machines described in this paragraph which are not located in a home rule charter or statutory city.

(c) Vending machines dispensing only bottled or canned soft drinks are exempt from the state, home rule charter or statutory city, and county inspection fees, but may be inspected by the commissioner or the commissioner's designee.

Subd. 2. **Identification; rules.** The commissioner may require that a vending machine must be identified in accordance with rules promulgated pursuant to chapter 14.

History: 1971 c 339 s 9; 1978 c 502 s 2; 1982 c 424 s 130; 1983 c 293 s 54; 1983 c 300 s 4; 1984 c 503 s 1; 1986 c 375 s 2; 1987 c 58 s 1; 1987 c 384 art 3 s 15; 1996 c 407 s 20

28A.10 POSTING OF LICENSE; RULES.

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

History: 1971 c 339 s 10; 1985 c 248 s 70; 1986 c 444

28A.11 ADJUSTMENTS.

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

History: 1971 c 339 s 11

28A.12 VIOLATIONS.

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

History: 1971 c 339 s 12; 1985 c 248 s 70

28A.13 POWER TO SUSPEND OR REVOKE LICENSES.

Whenever the commissioner has reason to believe that any provision of law relating to the manufacturing, processing, distribution, handling and sale of food, or rule issued by the commissioner thereunder, has been violated, the commissioner may suspend or revoke a license or permit granted under section 28A.04, or may limit the permission of the license or permit to only those aspects of the licensee's or permittee's business which are in conformity with the law and rules. Any person may be restrained by injunction from engaging in any business operation or category thereof for which that person is not validly licensed or for which a permit has not been issued. This suspension or revocation shall be made only after notice to the licensee or permittee and an opportunity to be heard with reference to the grounds for suspension or revocation, and this action by the commissioner shall in no way exempt such licensee or permittee from the penalties otherwise imposed in this chapter. The commissioner shall serve upon the licensee or permittee by registered letter containing a copy thereof, an order to show cause why the license or permit should not be permanently revoked, stating the grounds thereof, and the time and place of hearing, which time shall not be less than ten days after the date of mailing of the order. At the appointed time and place, and at such times as the matter may be adjourned to, the commissioner, or an appointed hearing officer, shall hear all proper evidence relating to the cause of the proposed revocation and, within a reasonable time thereafter, shall make and file a decision of the matter and forthwith mail to the licensee or permittee a copy thereof.

History: 1971 c 339 s 13; 1977 c 160 s 3; 1985 c 248 s 70; 1986 c 444

28A.14 TRANSFER OF BUSINESS.

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

History: 1971 c 339 s 14

28A.15 EXCLUSIONS.

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

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

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

Subd. 4. Any persons required to be licensed under chapter 19 or trucks operating under a certificate or permit issued pursuant to chapter 221 or warehouse operators, other than cold storage warehouse operators, offering storage or warehouse facilities for compensation.

Subd. 5. Persons whose principal mode of business is licensed under section 157.16 or 327.15; provided that the holding of any license pursuant to section 157.16 or 327.15 shall not exempt any person from the applicable requirements of the laws and rules administered by the commissioner, as they relate to composition, standards of identity, adulteration, labeling or misbranding of food.

Subd. 6. [Repealed, 1978 c 502 s 3]

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

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

Subd. 9. An individual who prepares and sells food that is not potentially hazardous food, as defined in rules adopted under section 31.11, at a community event or farmer's market on ten or fewer days in a calendar year and with gross receipts of \$1,000 or less in a calendar year. If the food is not prepared in a kitchen that is licensed or inspected, the seller must post a visible sign or placard stating that: "These products are homemade and not inspected."

History: 1971 c 339 s 15; 1974 c 2 s 2-4; 1975 c 412 s 13; 1980 c 509 s 17; 1985 c 237 s 1; 1985 c 248 s 70; 1986 c 444; 1987 c 384 art 2 s 7; 1992 c 602 s 1,2; 1996 c 407 s 21-23; 1996 c 451 art 4 s 70

28A.16 PERSONS SELLING LIQUOR.

The provisions of the Minnesota consolidated food licensing law, sections 28A.01 to 28A.16 and acts amendatory thereto, shall not apply to persons licensed to sell 3.2 percent malt liquor "on-sale" as provided in section 340A.403, or to persons licensed to sell intoxicating liquors "on-sale" or "off-sale" as provided in sections 340A.404 to 340A.407, provided that these persons sell only ice manufactured and packaged by another, or bottled or canned soft drinks and prepacked candy at retail.

History: 1971 c 339 s 16; 1974 c 2 s 5; 1985 c 305 art 12 s 5; 1Sp1985 c 16 art 2 s 26; 1991 c 249 s 31; 1996 c 407 s 24

28A.17 LICENSE RENEWAL.

Licenses for food processors or manufacturers or food brokers shall be renewed annually on January 1. Licenses for retail and wholesale food handlers shall be renewed annually on July 1. Licenses for mobile food concessions and for retail mobile units shall be renewed annually on April 1.

History: 1976 c 2 s 7; 1996 c 407 s 25

FOOD SAFETY ADVISORY COMMITTEE

28A.20 FOOD SAFETY ADVISORY COMMITTEE.

Subdivision 1. **Establishment.** A food safety advisory committee is established to advise the commissioner and the legislature on food issues and food safety.

Subd. 2. **Membership.** (a) The food safety advisory committee consists of:

- (1) the commissioner of agriculture;
- (2) the commissioner of health;
- (3) a representative of the United States Food and Drug Administration;
- (4) a representative of the United States Department of Agriculture;
- (5) one person from the University of Minnesota knowledgeable in food and food safety issues; and

(6) eight members appointed by the governor who are interested in food and food safety, of whom:

- (i) two persons are health or food professionals;
- (ii) one person represents a statewide general farm organization;
- (iii) one person represents a local food inspection agency; and
- (iv) one person represents a food-oriented consumer group.

(b) Members shall serve without compensation. Members appointed by the governor shall serve four-year terms.

Subd. 3. **Organization.** (a) The committee shall meet monthly or as determined by the chair.

(b) The members of the committee shall annually elect a chair and other officers as they determine necessary.

Subd. 4. **Staff.** The commissioner of agriculture shall provide support staff, office space, and administrative services for the committee.

Subd. 5. Duties. The committee shall:

- (1) coordinate educational efforts about various aspects of food safety;
- (2) provide advice and coordination to state agencies as requested by the agencies;
- (3) serve as a source of information and referral for the public, news media, and others concerned with food safety; and
- (4) make recommendations to Congress, the legislature, and others about appropriate action to improve food safety in the state.

History: 1990 c 511 s 1