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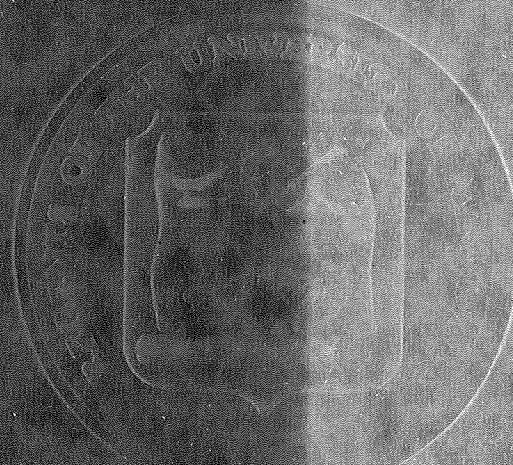
Michael J. Maus

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MINNESOTA AGRICULTURAL

AND FOOD LAW

Michael J. Maus

and

Dale C. Dahl

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STATE OF MINNESOTA

University of Minnesota  
June 1978

## PREFACE

This monograph is one of a series of publications developed by the Minnesota Agricultural Experiment Station as part of a research study entitled Economic Regulation of the U.S. Food System. This study is a contributing project to a regional research effort identified as NC-117 (Organization and Control of the U.S. Food System).

The Minnesota research, and the monographs developed to summarize its findings, has the following objectives:

Objective 1 (Phase I): "To develop an economic framework for describing existing statutory, administrative, and common law that facilitates, constrains, or regulates the firms and agencies in the U.S. food production and distribution system;"

Objective 2 (Phase II): "To conduct economic analyses of major legal institutions that deal directly with the organization, operation, and control of the U.S. food system," and

Objective 3 (Phase III): "To study the manner in which the law can be used as an instrument to affect the structural change suggested by other economic analyses dealing with the future performance of the food system."

Dale C. Dahl  
Professor and Adjunct Professor  
of Law  
Project Leader

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## OUTLINE OF MINNESOTA AGRICULTURAL LAW

### I. Farm Resources

To waste, to destroy, our natural resources, to skin and exhaust the land instead of using it so as to increase its usefulness, will result in undermining in the days of our children the very prosperity which we ought <sup>1/</sup>by right to hand down to them amplified and developed.

Land is not the only resource the modern farmer <sup>2/</sup> must use wisely.

He must be able to manage an array of resources including thousands of dollars worth of personal property such as livestock, machinery and equipment and harvested crops; human resources (labor); extensive credit, and water. With farm costs at an all time high, these resources must be properly managed if the farmer is to survive. Proper management decisions on resource utilization cannot be made without considering applicable law. This first chapter is a comprehensive outline of Minnesota law relating to farm resources.

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<sup>1/</sup> Theodore Roosevelt, Message to Congress, December 3, 1907.

<sup>2/</sup> "It brings up happy old days when I was only a farmer and not an agriculturist." O. Henry, The Gentle Grafter. Modern Rural Sports (1908).

## A. Real Property Law

Real property law is the initial topic in Chapter 1 of this book because of its importance to agriculture. Agriculture is, in broad terms, a use of real property. This book breaks the topic of real property law into two major divisions: ownership and use.

Real property is generally considered to encompass land and permanent improvements to land.<sup>1/</sup> The term includes that which is affixed to the land, that which is incidental or appurtenant to the land and that which is immovable by law.<sup>2/</sup>

Some question may arise as to whether certain items are more properly classified as real property or as personal property. No attempt will be made here to justify the treatment of one topic under real property as opposed to personal property, or vice versa. Mineral rights and growing are discussed under real property.

Topic B on personal property focuses on animal, farm equipment, and grain law.

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<sup>1/</sup> See, e.g., *National Lead Co. v. Borough of Sayreville*, 132 N.J. Super. 30, 331A. 2d 633 (1974).

<sup>2/</sup> *Strobel v. Northwest G. F. Mutual Insurance Co.*, 152 N.W.2d 794 (N.D. 1967).



1. Ownership

The first aspect of real property law that needs to be discussed is ownership. Ownership of real property means that the owner possesses certain rights with respect to that piece of property. The extent of these rights is discussed in section a, Estates in Land. The remaining sections discuss the following topics: leases, transfers of ownership (including a brief discussion of the effect of such a transfer on ownership of growing crops), the statute of frauds, the homestead exemption, and tax forfeited land. This last section discusses the use of tax forfeited land for county farms and the sale of tax forfeited agricultural land to veterans of World Wars I and II.

- a. Estates in land. The law of real property in Minnesota is basically the same for agricultural land as it is for other types of land. This section contains a brief review of how real property can be held, or owned, in Minnesota.

The extent of property interests in real estate are commonly referred to as estates in land. For purposes of this section, "estates" will be limited to interests in real property which may vary widely in degree, quality, nature, and extent. Minnesota divides estates in land into estates of inheritance for life, for years, and at will, and by sufferance, <sup>1/</sup> thus all estates in agricultural land will be of one of these types.

Estates of inheritance are more commonly referred to as holding property in fee simple absolute, in fee simple, or in fee. <sup>2/</sup> Very basically, an estate in fee is that quantity of interest that in a nonlegal sense one thinks of as total ownership of land. Holding real property in fee is sometimes referred to as "perfect title." <sup>3/</sup> No one can have a greater interest. <sup>4/</sup> It is the entire interest and property in the land. <sup>5/</sup>

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<sup>1/</sup> Minn. Stat. Ann. § 500.01 (West).

<sup>2/</sup> See Minn. Stat. Ann. § 500.02 (West).

<sup>3/</sup> Frink v. Darst, 14 Ill. 304 (1853).

<sup>4/</sup> See, e.g., Vaughan v. Compton, 361 Mo. 467, 235 S.W.2d 328 (1950).

<sup>5/</sup> Libby v. Clark, 118 U.S. 250, 255, 6 S.Ct. 1045, 30 L.Ed. 133 (1886).

In Minnesota, as in most states, the law assumes that a transfer of property transfers an absolute estate - a fee - unless there is clear language showing an intent to pass a lesser estate or interest. <sup>6/</sup>

One important quality of the fee simple estate is that it is relatively easy to sell or otherwise alienate. In fact, an estate is void ab initio if it suspends absolutely the power to alienate (convey) for longer than the authorized time. <sup>7/</sup> Such power is suspended when there is no person alive by whom an absolute fee can be conveyed. <sup>8/</sup> The power of alienation cannot be suspended for more than two lives in being at the creation of the interest which suspended the power. <sup>9/</sup>

With the exception of creating a "nuisance" (see page 47) the owner in fee can generally do what he wants with his property. Fee simple estates are unlimited in duration and descend to heirs of the owner should he die intestate (hence the Minnesota term "estates of inheritance"). A fee simple estate can, of course, be devised by will. Most agricultural land, as with most real property, is held in fee simple.

A second type of estate in land that one could possess in Minnesota is the life estate. <sup>10/</sup> A life estate is an estate where the owner is entitled to use and enjoyment of the property as long

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<sup>6/</sup> In Re Silverson's Will, 214 Minn. 313, 8 N.W.2d 21 (1943).

<sup>7/</sup> Minn.Stat. Ann. § 500.13 (West).

<sup>8/</sup> Id.

<sup>9/</sup> Id. (See statute for exception relating to contingent remainders.) (For discussion of restricting this statute to present estates, see In Re Anderson's Estate, 267 Minn. 264, 126 N.W.2d 250 (1964).

<sup>10/</sup> Minn.Stat. Ann. § 500.01 (West).

as he lives, but the interest ceases at his death and will not be passed on to heirs and cannot be devised. A life estate is not necessarily measured by the life of the owner of such life estate, but may instead be measured by the life of another person. Such an estate is called a life estate pur autre vie. In such a case, the life tenant has the right to use and enjoyment of the property until the death of the person whose life measures the estate.

Life estates used to be very common when a man with children predeceased his wife. If his objective was to make sure that his wife was taken care of for the rest of her life yet he wanted to ensure the children got the farm, he would give her a life estate with a remainder in fee simple in the children. Not only would this cut down on her estate taxes (the remainder would not go through her estate and the life estate would dissipate at her death) but it would prevent a second husband of the wife, should he not be interested in farming, from selling the farm out of the family. It is true that a life estate can be alienated, with some difficulty, but the wife or her new spouse could only sell an interest that would last as long as she lived. The farm would then revert back to the children. Legal protection of minors would make it very unlikely that minor children could be coerced into selling their remainder interests, and this would prevent sale of the entire estate.

Legal life estates are less common today because of the development of the modern trust. <sup>11/</sup> More people set up life

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<sup>11/</sup> Krasnowiecki, Ownership and Development of Land, (1965) at 334.

estates under a trust to avoid the administrative straight jacket of the legal life estate. <sup>12/</sup> But in the situation where a farmer wants to be sure that his children get the farm, the additional flexibility of a trust which allows the trustee to sell the farm may not be desirable. He is interested in keeping the farm in the family, not in retaining a certain quantity of proceeds. In such a case, the added cost of the trust may make it undesirable because the added flexibility is not of any use.

If someone gives a gift of a life estate to two or more persons for their lives it will generally be construed to create an estate which lasts until the death of the last survivor. <sup>13/</sup>

The life tenant is entitled to present enjoyment of the property, but he still owes certain duties to those possessing future interests in the property. The life tenant in possession must make ordinary repairs necessary to preserve the property, but is under no duty to make improvements and cannot compel remaindermen (those who hold future interests in the property) to reimburse him for improvements made on the property. <sup>14/</sup> For example, the life tenant would be required to keep the barn painted and keep it from falling over, but he would not be compelled to build a new barn if it was destroyed while in a state of repair. A life tenant is under no duty to replace buildings accidentally destroyed, for example, by fire. <sup>15/</sup> If he has insured the building for his own protection, he is entitled to the insurance proceeds. <sup>16/</sup>

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<sup>12/</sup> Id.

<sup>13/</sup> I. Tiffany, Law of Real Property § 49 (3d. Ed. 1939).

<sup>14/</sup> Rendahl v. Hall, 160 Minn. 502, 200 N.W. 700 (1924).

<sup>15/</sup> Id.

<sup>16/</sup> Id.



The life tenant is under a duty to pay taxes. <sup>17/</sup> He is under a duty to pay interest on a mortgage, but not principal. <sup>18/</sup> When a life tenant fails to pay taxes or make necessary repairs, and the administrator under the will creating the life estate pays the taxes or makes repairs to save the farm from loss, the administrator may go into court and have a receiver appointed to take charge of the premises, collect the income or rentals, and apply the proceeds to reimbursement. <sup>19/</sup> The same power would seem to exist for failure to pay interest on a mortgage. A receiver so appointed could sell the life estate if necessary. <sup>20/</sup>

The third type of interest one might hold in real property in Minnesota is the estate for years. <sup>21/</sup> An estate for years is an agreement for possession of land for a fixed period of time, e.g. for ten years or for one year. <sup>22/</sup> Under Minnesota law, it is a chattel interest less than a freehold estate (and thus not inheritable). <sup>23/</sup> In many ways, the estate for years is similar to a lease, although it is sometimes created by will. Even when created by will, the relationship between the holder of the future interest (person who gains possession after the term of years) and

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<sup>17/</sup> Turner v. Edwards, 207 Minn. 455, 292 N.W. 257 (1940).

<sup>18/</sup> Kreuscher v. Roth, 152 Minn. 320, 188 N.W. 966 (1922).

<sup>19/</sup> St. Paul Trust Co. v. Mintzer, 65 Minn. 124, 67 N.W. 657 (1896).

<sup>20/</sup> Id.

<sup>21/</sup> Minn. Stat. Ann. § 500.01 (West).

<sup>22/</sup> See Seabloom v. Krier, 219 Minn. 326, 18 N.W. 88 (1945).

<sup>23/</sup> Minn. Stat. Ann. § 500.05 (for discussion of inability of tenant for years to sign petition to dissolve school district under Minn. Stat. Ann. § 122.28 because he is not a freeholder, see Op. Atty. Gen., 166-E-3, Aug. 5, 1955).

the possessor of a term of years may be referred to as a modified form of the landlord-tenant relationship. <sup>24/</sup> But a term of years is an estate and not merely a contract imposing a personal obligation on either party. <sup>25/</sup> Conveyances creating an estate for years are almost invariably accompanied by some contractual stipulations such as payment of rent or mode of using premises, making improvements, to insure, to pay taxes, or to renew the lease. <sup>26/</sup>

Unless he subleases it, the tenant of an estate for years has the right to possession of the land. <sup>27/</sup> This means he has a right of ejectment against, and can kick out, the remainderman or landlord. <sup>28/</sup> As with life tenants, the tenants of a term of years is under a duty (implied contract if not actually expressed) to make repairs in order to prevent "waste." <sup>29/</sup> He must return the premises in the condition he received them. <sup>30/</sup> In the absence of agreement, the landlord is under no duty to repair or to rebuild destroyed premises. <sup>31/</sup>

The final category of estates in real estate in Minnesota are estates at will and by sufferance. <sup>32/</sup> An estate at will can be

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<sup>24/</sup> I. Tiffany, Law of Real Property § 76 (3d. Ed. 1939).

<sup>25/</sup> Id. § 87.

<sup>26/</sup> Id. (For discussion of covenant to pay taxes and assessments see, e.g., Marble v. Oliver Mining Co., 172 Minn. 263, 215 N.W. 71 (1927)).

<sup>27/</sup> Id. § 94.

<sup>28/</sup> See, e.g., Cooper v. Gordon, 37 N.D. 247, 164 N.W. 21 (1917).

<sup>29/</sup> I. Tiffany, Law of Real Property § 101 (3d. Ed. 1939).

<sup>30/</sup> Id.

<sup>31/</sup> Id. § 103.

<sup>32/</sup> Minn. Stat. Ann. § 500.01 (West).

defined as a tenancy for a term as both parties shall desire. <sup>33/</sup>

It is terminable, with proper notice, by either the landlord or the tenant and has no fixed duration. <sup>34/</sup> An estate at will

includes the right to possession and right of ejectment against the landlord. <sup>35/</sup> A person can become a tenant at will only by

permission to go on the land from the owner or someone acting for him. <sup>36/</sup> Thus, if the initial possession is via trespass, a tenancy

at will is not established until the owner grants permission.

A tenancy at sufferance arises when a person wrongfully holds over after expiration of his tenancy or after his estate or right has ended. <sup>37/</sup> It differs from the tenancy at will in that it is without the permission of the landlord. The tenant is not a trespasser by definition because he entered by permission. One example of a tenancy at sufferance would be the wife of a life tenant staying on a place after her husband has died. Another example would be a sublessee holding over after expiration of the lessee's term. As a general rule, the landlord has the option of treating the tenants continuing in possession as wrongfully doing so or as a tenant for an additional term. <sup>38/</sup>

Thus there are four categories of interests one can have in real property in Minnesota: absolute or fee simple, life estate, estate for years or estates at will or by sufferance. The fee simple

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<sup>33/</sup> Western Transportation Co. v. Lansing, 49 N.Y. 499 (1872). (Minn. law adopted from N.Y.).

<sup>34/</sup> Thompson v. Baxter, 107 Minn. 122, 119 N.W. 797 (1909).

<sup>35/</sup> I. Tiffany, Law of Real Property § 155 (3d. Ed. 1939).

<sup>36/</sup> Johnson v. Wiseth, 197 Minn. 280, 266 N.W. 852 (1936).

<sup>37/</sup> Wiedemann v. Brown, 190 Minn. 33, 250 N.W. 724 (1933).

<sup>38/</sup> I. Tiffany, Law of Real Property § 175 (3d. Ed. 1939).

or absolute estate is the most common. Leases are discussed in a succeeding section of this monograph. Perhaps it should be noted that the estate in fee tail, still allowed in some states, has been abolished in Minnesota. <sup>39/</sup> The estate in fee tail is an estate which does not pass on to heirs generally but only to heirs of the body. Therefore, if someone in Minnesota attempted to pass on the farm "to his daughter and her heirs, but if she should have no issue, then to brother John", the daughter would receive an absolute estate and brother John would have nothing. <sup>40/</sup>

Interests in land can be possessory or future. <sup>41/</sup> A possessory estate is one where the holder is entitled to immediate possession and use of the property. A future estate is one where the holder is, or may be, entitled to possession and use at some future date. Future estates, or future interests, can be either vested or contingent. <sup>42/</sup> A vested future estate is one that is certain to become possessory. An example would be a farmer who leaves the farm "to his wife Martha for life, remainder to his son John." John possesses a vested future interest in an absolute estate because he or his heirs is certain to gain possession after Martha's death. A contingent remainder is one that will become possessory only after the occurrence of a specified contingency. An example would be leaving the farm "to my wife Martha for life, then to John if he reaches the age of 20, if not, to daughter Sara." John and Sara would

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<sup>39/</sup> Minn. Stat. Ann. § 500.03 (West).

<sup>40/</sup> Minn. Stat. Ann. § 500.03 (West).

<sup>41/</sup> Minn. Stat. Ann. § 500.06 (West).

<sup>42/</sup> Minn. Stat. Ann. § 500.12 (See Minn. Stat. Ann. § 500.13 for restrictions on creation of future estates).

have alternate contingent remainders--contingent on John's reaching, or not reaching, the age of 20.

Landowners who deed or devise by will land they own often like to impose conditions on the future use of that land. A man may want to give his land to his children but only if the land is never used to sell liquor, or only if it is never used to raise sheep. When conditions are imposed upon the use of land either by will or by deed, and these conditions are of no benefit to the party in whose favor they are performed, they may be disregarded. <sup>43/</sup> Even if the conditions are of benefit to the party, they will cease to be valid 30 years after the deed or will creating them, and thereafter may be disregarded. <sup>44/</sup>

The purpose of this section of the law is to prevent dead persons from imposing conditions on the use of land which will restrict the use of such land indefinitely no matter how fruitful the restricted use may have become. In the absence of this statute, it is probable that over time most of the land in our society would be restricted as to its use. This would be contrary to many of the economic goals of our society.

A court may well strike out a condition imposed by a farmer whereby he would leave the farm to his son "so long as it is never used to raise sheep" because since the farmer is dead, he receives no benefit. Even if conveyed by deed, and the farmer were still alive, it is not clear that he, the farmer, would "receive benefit", although

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<sup>43/</sup> Minn. Stat. Ann. § 500.20 (West).

<sup>44/</sup> Id.



there are, in fact, situations in which he could probably show it was of benefit to him not to have sheep raised on the land. In any case, the condition would not be valid beyond 30 years after the date of the conveyance or after probate of the will.

Minnesota law prohibits a natural person who is not a citizen or a permanent resident alien from acquiring, either directly or indirectly, any interest in agricultural land. <sup>45/</sup> No business entity can, either directly or indirectly, obtain any title to agricultural land unless at least 80 percent of each class of stock issued and outstanding or 80 percent of the ultimate beneficial interest is held by U.S. citizens or permanent resident aliens. <sup>46/</sup>

This law does not apply to land acquired by devise, inheritance, as security on indebtedness, by process of law in the collection of debts, or by procedure for the enforcement of a lien or claim thereon (whether created by mortgage or otherwise), but all agricultural land acquired in the collection of debts or by enforcement of a lien must be disposed of within three years. <sup>47/</sup> Other exceptions include:

1. subjects of a foreign country whose rights to hold land are secured by treaty,
2. lands used by a common carrier for transportation purposes, <sup>48/</sup>

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<sup>45/</sup> Act of May 26, 1977, ch. 269, § 1, 1977 Minn. Sess. Law Serv. (West), amending Minn. Stat. § 500.221 (1976). "Agricultural land" is land capable of use in the production of agricultural crops, livestock or livestock products, milk or dairy products, poultry or poultry products, or fruit and other horticultural products but does not include any land zoned by a local government unit for a use other than and nonconforming with agricultural use. <sup>Id.</sup>

<sup>46/</sup> Act of May 26, 1977, ch. 269, § 1, 1977 Minn. Sess. Law Serv. (West), amending Minn. Stat. § 500.221 (1976).

<sup>47/</sup> <sup>Id.</sup>

<sup>48/</sup> As defined in Minn. Stat. § 218.011(2).

3. land used in connection with mining, but, pending the development of mining, the land cannot be used for farming except under lease to a family farm, a family farm corporation, or an authorized farm corporation, and
4. agricultural land used for research and experimental purposes if the ownership of the land is incidental to the research or experimental objectives of the person or business entity, provided that the total acreage owned does not exceed the acreage owned on May 26, 1977. <sup>49/</sup>

The Attorney General is charged with enforcing this law. <sup>50/</sup> He may enjoin a prospective violation, or he may bring an action forcing a violator to sell. <sup>51/</sup> If found in violation of the Act, the owner has one year to sell the property, and the one year limitation is a covenant running with title to the land. <sup>52/</sup> If the land is not sold by the owner, it will be sold at public auction in the manner precribed for the foreclosure of a mortgage by action. <sup>53/</sup>

This act only prevents the future acquisition of land. <sup>54/</sup> But any person who is prohibited from purchasing land by this Act and who now owns agricultural land must have filed a report with the Commissioner of Agriculture and must make an annual report by April 15 each year hereafter. <sup>55/</sup> This report must contain a description of all agri-

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<sup>49/</sup> Act of May 26, 1977, ch. 269, § 1, 1977 Minn. Sess. Law Serv. (West), amending Minn. Stat. § 500.22 (1976).

<sup>50/</sup> Id.

<sup>51/</sup> Id.

<sup>52/</sup> Id.

<sup>53/</sup> Id.

<sup>54/</sup> Id.

<sup>55/</sup> Id.

cultutral land held within the state, the purchase price and market value of the land, the use of which it is put, the date of acquisition and any other reasonable information required by the Commissioner.<sup>56/</sup> This information is available to the public.<sup>57/</sup> Willful failure to register is a gross misdemeanor and each month is a separate offense.<sup>58/</sup>

The original purpose behind restrictive purchase statutes in midwestern states was a fear that foreign investors, particularly English nobility, would acquire large ranches and establish themselves as landlords, jeopardize acquisition of statehood, and maybe even establish an economic colony of Great Britain.<sup>59/</sup> This does not explain the continued vitality of these laws. Although restrictive purchase statutes have been upheld by the U.S. Supreme Court,<sup>60/</sup> there are some serious questions today of their continued constitutionality.<sup>61/</sup>

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<sup>56/</sup> Id.

<sup>57/</sup> Id.

<sup>58/</sup> Id.

<sup>59/</sup> Morrison, Limitations on Alien Investment in American Real Estate, 60 Minn. L. Rev. 621, 625 (1976).

<sup>60/</sup> Terrace v. Thomspons, 263 U.S. 197, 44 S. Ct. 15, 68 L. Ed. 255 (1923).

<sup>61/</sup> See Morrison, Limitations on Alien Investment in American Real Estate, 60 Minn. L. Rev. 621, 639-56 (1976).

- b. Leases. For a preliminary discussion of estates for years and tenancy at will or by sufferance, see the preceeding section on estates in land.

A lease is a conveyance of lands for a term less than the party conveying has in the premises, in return for rent or other recompense with some reversionary interest remaining in the lessor.<sup>1/</sup> Generally, it is more than the mere conveyance of an estate, it is a contract for the possession of profits of land for a certain period.<sup>2/</sup> A tenant is one who holds land by any kind of right or title.<sup>3/</sup> The relation of landlord and tenant exists where one person occupies the premises of another in subordination of the other's title and with his consent.<sup>4/</sup>

As a general rule, unless a landlord reserves by lease the right to enter upon the land, an entry by him is unauthorized and amounts to trespass.<sup>5/</sup> Absent agreement, the landlord has no right to enter to make repairs.<sup>6/</sup> In non-residential leases, the landlord owes no duty to make repairs.<sup>7/</sup>

As noted in the preceeding section on estates in land, a tenancy at will is one which may be terminated upon proper notice by either

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<sup>1/</sup> State v. Bowman, 202 Minn. 44, 279 N.W. 214 (1938).

<sup>2/</sup> Gruman v. Investors Diversified Services, 247 Minn. 502, 78 N.W. 2d 377 (1956).

<sup>3/</sup> Place v. St. Paul Title Insurance and Trust Co., 67 Minn. 126, 69 N.W. 706 (1897).

<sup>4/</sup> State v. Bowman, supra. at 46.

<sup>5/</sup> E.g., Glidden v. Second Avenue Investment Co., 125 Minn. 471, 147 N.W. 658 (1914).

<sup>6/</sup> Groebel v. Hough, 26 Minn. 252, 2 N.W. 847 (1879).

<sup>7/</sup> E.g., Barron v. Liedloff, 95 Minn. 474, 104 N.W. 289 (1905).

party. It is a tenancy at the will of both parties. <sup>8/</sup> It can be a tenancy from month to month when the rent is paid monthly. <sup>9/</sup> But most agricultural leases will be a tenancy from year to year on a tenancy for years in order to encompass the growing season.

A lessee of real property takes subject to all claims of title enforceable against the lessor. <sup>10/</sup> This prevents the landowner from using the lease as a vehicle to avoid the claims of others who may have a valid interest in the land.

The rights of parties to a now quite uncommon contract for farming on shares depends upon the language of the particular contract. Sharecropping grew up after the Civil War when cash was scarce and planters had limited resources with which to pay labor while labor had limited resources with which to buy equipment and livestock. <sup>11/</sup> It is now largely confined to southern states. <sup>12/</sup>

The sharecropping arrangement may create a landlord-tenant relationship, but generally in Minnesota it does not. <sup>13/</sup> When sharecropping arrangements were more popular, a common arrangement was to have a contract whereby the parties were tenants in common in the crops with title to the crops remaining in the owner of the land until performance of the contract by the cropper. <sup>14/</sup> The intent

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<sup>8/</sup> Thompson v. Barter, 107 Minn. 122, 119 N.W. 797 (1909).

<sup>9/</sup> Id.

<sup>10/</sup> Schrunk v. Andres, 221 Minn. 465, 22 N.W. 2d 548 (1946).

<sup>11/</sup> Hannah and Krausz, Law and Court Decisions on Agriculture, p. 214 (1965).

<sup>12/</sup> Id.

<sup>13/</sup> For discussion, see 2 Minn. L. Rev. 43.

<sup>14/</sup> Dun. Dig. (3d. Ed.) § 5484.



of the parties determines whether a landlord-tenant relationship is created or whether it is a tenancy in common in the products raised. <sup>15/</sup> If the contract is for a fixed term, provides for giving up possession at the end of the term, and provides that improvements on the premises must be kept in repair, it is more likely to be construed as creating a landlord-tenant relationship. <sup>16/</sup>

Where farmland is leased, it is common to give the lessor a lien on the crops as security to insure compliance with the contract. <sup>17/</sup> A discussion of secured transactions can be found under the credit section of this monograph.

Forfeiture of a lessee's interest in a lease of a farm upon which crops are growing is not favored. <sup>18/</sup> Forfeiture will not be enforced where it works great injustice and the lessor is otherwise protected. <sup>19/</sup>

When the tenant abandons leased premises, the landlord is under no obligation to take action to mitigate damages. <sup>20/</sup> In this respect, landlord-tenant law is different than ordinary contract law. This means, for example, that a landlord does not have to harvest crops after a tenant has abandoned the premises, and the landlord can still obtain a judgment for the full amount of unpaid rent. As a general rule, a tenant who abandons cannot recover from

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<sup>15/</sup> Larson v. Archer-Daniels-Midland Co., 226 Minn. 315, 32 N.W. 2d 649 (1948).

<sup>16/</sup> Mutual Benefit Life Insurance Co. v. Canby Investment Co., 190 Minn. 144, 251 N.W. 129 (1973); Gillian v. Municipal Court, Crookston, 123 Minn. 377, 143 N.W. 978 (1913).

<sup>17/</sup> See Donnelly v. Stepka, 193 Minn. 11, 275 N.W. 505 (1934).

<sup>18/</sup> Warren v. Driscoll, 186 Minn. 1, 242 N.W. 346 (1932).

<sup>19/</sup> Id.

<sup>20/</sup> Control Data Corp. v. Metro Office Parks Co., 296 Minn. 302, 208 N.W. 2d 738 (1973).

his landlord who has obtained possession the reasonable value of the seed for crops sown by the tenant. <sup>21/</sup>

Damages for breach of a farm lease follow the ordinary rule of contract damages. This means that courts will attempt to place the non-breaching party in the same position he would be in if the contract had been completed. So the measure of damages for failure to fall plow as a contract called for is the difference in rental value for one year of the land plowed and unplowed. <sup>22/</sup> The measure recoverable by a lessor after the lessee hauled away manure from a leased farm instead of spreading it on the farm as stipulated in the lease is the reasonable cost or value of manure spread as agreed. <sup>23/</sup>

Where a lease provided that a tenant would receive compensation for preparing ground for crops if the land was sold before crops were planted, and the land was so sold, the tenant is entitled to recover for hauling manure to fertilize the farm for next year. <sup>24/</sup> When the lease provides that lessee must surrender possession if the farm is sold, and the farm is sold in December, lessee has the right to harvest winter wheat but not to plant spring crops. <sup>25/</sup>

The Constitution of the State of Minnesota prohibits leases in agricultural land for a period longer than 21 years. <sup>26/</sup> This section of the Constitution does not apply to mineral leases <sup>27/</sup> nor

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<sup>21/</sup> Mahl v. Norton, 201 Minn. 203, 275 N.W. 843 (1937).  
<sup>22/</sup> Meisch v. Safranski, 147 Minn. 122, 179 N.W. 685 (1920).  
<sup>23/</sup> Sassen v. Haegle, 125 Minn. 441, 147 N.W. 445 (1914).  
<sup>24/</sup> Storibo v. Nyberg, 159 Minn. 536, 198 N.W. 998 (1924).  
<sup>25/</sup> Jennison v. Priem, 202 Minn. 338, 278 N.W. 517 (1938).  
<sup>26/</sup> Minn. Const. art. 1, sec. 15 (Restructured Constitution--1974) (also abolishes feudal tenure).  
<sup>27/</sup> State v. Evans, 99 Minn. 220, 108 N.W. 958 (1906).

to the grant of a right to hunt and fish. <sup>28/</sup>

Under the statute of frauds, all leases of land for more than one year must be in writing to be enforceable. <sup>29/</sup> For more extensive discussion of this subject, see section of this monograph entitled statute of frauds, infra.

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<sup>28/</sup> Minnesota Valley Gun Club v. Northline Corp., 207 Minn. 126, 290 N.W. 222 (1930).

<sup>29/</sup> Minn. Stat. Ann. § 513.04; Minn. Stat. Ann. § 513.05 (West).

c. Transfers of Ownership.

(1) Conveyances.

A transfer of ownership of real property is usually referred to as a conveyance. A conveyance or deed includes every instrument in writing which passes a present interest in real property. <sup>1/</sup> This includes mortgages and assignment but excludes wills, leases of less than 3 years, and powers of attorney. <sup>2/</sup> In many jurisdictions, mortgages and trust deeds are not treated as conveyances. <sup>3/</sup>

(2) Formalities.

A conveyance must be executed, acknowledged by the parties executing, and the acknowledgment must be certified. <sup>4/</sup> There are numerous other formalities that must be complied with. These involve words to be used, legal descriptions of the property, competence, signatures, etc. <sup>5/</sup> After the conveyance has been transacted, it must be recorded in the county where the land is located. <sup>6/</sup> This filing with the County Recorder constitutes constructive notice to prospective purchasers of the land and thereby prevents the original owner from conveying good title to a second purchaser. <sup>7/</sup> An unrecorded conveyance is void against a purchase in good faith for value whose conveyance is first

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<sup>1/</sup> See Minn. Stat. Ann. § 507.01; Thomas v. Williams, 105 Minn. 88, 117 N.W. 155 (1908) (grant or reserved life estate, grantee's title conditioned on survivorship, held that instrument was a conveyance).

<sup>2/</sup> Minn. Stat. Ann. § 507.01 (West).

<sup>3/</sup> 2 Patton on Titles § 331 (2d. Ed. 1957).

<sup>4/</sup> Minn. Stat. Ann. § 507.24 (West).

<sup>5/</sup> See 2 Patton on Titles § 331 et seq. (2d. Ed. 1957).

<sup>6/</sup> Minn. Stat. Ann. § 507.24 (West).

<sup>7/</sup> Minn. Stat. Ann. § 507.251 (West).

recorded and as against attachment therein. <sup>8/</sup>

The result of this recording requirement is that if Farmer A sells land to Farmer B, and the transaction is not recorded, then Farmer A sells the same land to Farmer C for something near market value, C having no knowledge of the initial transaction, Farmer C will get good title (assuming he duly records the transaction) and B will be stuck trying to get his money back from A. The purpose of requiring a recording is to protect subsequent purchasers such as C. <sup>9/</sup>

If C had had knowledge of the unrecorded transaction, he would not be a "purchaser in good faith" and would not receive good title. <sup>10/</sup> C also would not be a "bona fide purchaser" entitled to protection under the recording act even if he had paid valuable consideration and was without actual knowledge of the previous conveyance if he had knowledge of facts which ought to have put him on an inquiry that would have led to knowledge of such a conveyance. <sup>11/</sup> If A had been willing to sell the land for considerably less than its value, this fact alone would probably be sufficient to require C to inquire more carefully into A's title. Possession of the property by someone other than A (e.g., B) constitutes constructive notice to C of some defect in the transaction and will deprive him of protection of the recording act if the possession is present, actual, open, and exclusive. <sup>12/</sup>

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<sup>8/</sup> Minn. Stat. Ann. § 507.34 (West).

<sup>9/</sup> See Paulson v. Clough, 40 Minn. 494, 42 N.W. 398 (1889).

<sup>10/</sup> Henschke v. Christian, 228 Minn. 142, 36 N.W. 2d 547 (1949).

<sup>11/</sup> Id.

<sup>12/</sup> B.W. and Leo Harris v. City of Hastings, 240 Minn. 44, 59 N.W. 2d 813 (1953).

(3) Signatures of Both Parties.

If the owner of real property is married, he or she cannot mortgage or sell their homestead (place where they actually reside--see section of this monograph entitled homestead) without the signature of both parties on the instrument. <sup>13/</sup> An exception is the purchase-money mortgage (seller is financing the purchase of the homestead) where the non-signing spouse has no rights against the mortgagee-seller. <sup>14/</sup> By joint deed, the husband and wife can convey the real estate interest of either. <sup>15/</sup>

If the real estate is not a homestead, the husband or wife can convey real property separately owned by separate deed. <sup>16/</sup> If there is any doubt as to whether the real estate is a homestead, the purchaser should insist on the signature of both spouses.

The policy behind the both signatures requirement is to protect the homestead right and preserve the homestead to the family even at the sacrifice of just demands. <sup>17/</sup>

A minor spouse has the legal capacity to join in a conveyance of property owned by his or her spouse. <sup>18/</sup> If one spouse is insane, the other can convey property as if he or she were unmarried. <sup>19/</sup> If consent of one spouse is fraudulently induced, he or she can maintain an action to have the transaction set

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<sup>13/</sup> Minn. Stat. Ann. § 507.02 (West).

<sup>14/</sup> Minn. Stat. Ann. § 507.03 (West).

<sup>15/</sup> Minn. Stat. Ann. § 507.02 (West).

<sup>16/</sup> Id.

<sup>17/</sup> Holden v. Farwell, Ozmun, Kirk, and Co., 223 Minn. 550, 27 N.W. 2d 641 (1947).

<sup>18/</sup> Minn. Stat. Ann. § 507.02 (West).

<sup>19/</sup> Minn. Stat. Ann. § 507.04 (West).

aside. <sup>20/</sup>

(4) Growing Crops.

Growing crops are such a part of the realty that unless expressly reserved, they pass with a conveyance or sale of the land. <sup>21/</sup> Evidence of an oral contract to reserve the crops will be excluded because of the parol evidence rule. <sup>22/</sup> (Parol evidence rule provides that terms of a written contract can't be contradicted, altered, added to, or varied by oral evidence of a prior or contemporaneous oral agreement. <sup>23/</sup>) Where a tenant abandons a farm he has leased, the crops belong to the landlord and there is no obligation that he reimburse the departed tenant for the cost of seed, nor will this cost be set-off against rent due. <sup>24/</sup>

But crops are not regarded as an inseparable part of realty for all purposes. In a bankruptcy action, crops growing on an exempt homestead do not pass as part of the homestead and therefore are not exempt. <sup>25/</sup> Once severed, of course, there is no question but that crops are then personal property. <sup>26/</sup>

Whether or not crops are realty thus depends upon the reason for which the question is being asked.

(5) Contract for Deed.

There are numerous instruments for conveying real property

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<sup>20/</sup> Farr v. Dunsmoor, 36 Minn. 437, 31 N.W. 858 (1887).  
<sup>21/</sup> E.g., Kammrath v. Kidd, 89 Minn. 380, 95 N.W. 213 (1903).  
<sup>22/</sup> Id.  
<sup>23/</sup> Dun. Dig. (3d Ed.) § 3368.  
<sup>24/</sup> Mehl v. Norton, 201 Minn. 203, 275 N.W. 843 (1937).  
<sup>25/</sup> Vought v. Kanne, 10 F.2d 747 (8th Cir. 1926).  
<sup>26/</sup> Id.

such as the warranty deed, quit claim deed, probate deed, mortgage form, etc. A discussion of these is beyond the scope of this monograph. Utilization of these instruments to convey agricultural land is substantially the same as their utilization in conveying other types of real estate.

The contract for deed, or land contract, does warrant some discussion. The contract for deed is primarily a means of financing a land purchase, not an instrument for conveying title. It is a contract under which the buyer-vendee purchases land from the seller-vendor on installment payments. In effect, the seller is financing the transaction. Securing a loan by deed is not a contract for deed, it is a mortgage. The contract for deed differs from the purchase-money mortgage, which is a seller financed mortgage, in that legal title to the property remains in the seller under a contract for deed. Under a purchase-money mortgage, title passes to the purchaser and the seller-mortgagee has a lien in the property. Further differences will be addressed in the following paragraphs. Under a contract for deed, the buyer has the right to use of the property, and after full performance the buyer can compel the seller to convey title (consider the problems that arise if the vendor becomes incompetent or conveys his interest to a minor).

The contract for deed is quite common in Minnesota. One of its chief advantages is that it permits installment payment of the down payment. <sup>27/</sup> Another is that it encourages vendors to

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<sup>27/</sup> See Steuben, Real Estate Planning (1974) at p. 156.



finance sales in times of tight money. The major disadvantage, from the buyer's perspective, of a contract for deed is the very short time within which the buyer can pay off arrearages and hold onto his property after the seller notifies the buyer that he intends to cancel the contract for default of payment. For contracts executed after August 1, 1976, the time is 30 days if less than 30% of the purchase price has been paid, 45 days if 30-50% of the purchase price has been paid, and 60 days if 50% or more of the purchase price has been paid. <sup>28/</sup> For contracts prior to August 1, 1976, the period is 30 days. <sup>29/</sup> There is no subsequent period of redemption. The mortgage, including the purchase-money mortgage, allows 6 months or 1 year to redeem property after mortgage foreclosure conditioned on the buyer paying past due principal plus interest and costs of foreclosure. <sup>30/</sup> If the real estate involved is larger than 10 acres, and most agricultural purchases will be, the period is 1 year. <sup>31/</sup>

If the contract for deed vendee is unable to make payment within the allotted number of days, he may lose his entire interest in the property regardless of how much he has paid. The vendor is not required to have a sale. To foreclose a mortgage, on the other hand, a foreclosure sale is required with surplus (if any) over outstanding debt going to the purchaser. <sup>32/</sup> Although it would be logical that the contract for deed vendee would have an

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<sup>28/</sup> Minn. Stat. Ann. § 559.21 (West).

<sup>29/</sup> Id. (prior to amendment).

<sup>30/</sup> Minn. Stat. Ann. § 580.23 (West).

<sup>31/</sup> Id.

<sup>32/</sup> Minn. Stat. Ann. § 580.10 (West).

action for unjust enrichment or restitution after losing his property to the vendor, such is not currently the case in Minnesota. <sup>33/</sup>

There is an argument that this unusually harsh remedy violates the due process clause of the United States Constitution because of the absence of a hearing and other procedural safeguards. <sup>34/</sup> The remedy may be harsher than the needs of the creditor require and statutory change may be needed to more evenly balance vendor and vendee rights. <sup>35/</sup> One possibility is to restrict the fast remedy to situations where there actually was a low down payment so that landowners will continue to finance sales of this nature. There appears to be no valid reason why a period of redemption should not be allowed after the notice period has expired.

To the purchaser of agricultural land, the absence of a redemption period is particularly harsh. If the farmer-purchasee had a bad year, or if he got hauled out without adequate insurance, or for some other reason he did not have capital available, he could lose his farm before he has had time to make up his losses. Or he may be forced to sell grain or livestock at a time when the market is down rather than waiting for prices to rise. Because of the one year redemption period under a mortgage, the mortgagee is a much easier person with whom to negotiate a deferral of payments than is the contract for deed vendor.

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<sup>33/</sup> Johnson v. Ecklund, 72 Minn. 195, 75 N.W. 14 (1898).

<sup>34/</sup> See note, Cancellation of Contract for Deed: The Constitutionality of Minnesota Statutory Procedure, 58 Minn. L. Rev. 247 (1974).

<sup>35/</sup> Interview with Professor Stephen B. Scallen, University of Minnesota Law School, July, 1977.

The purchaser of real property, particularly if it is to be used for agricultural purposes, should avoid using the contract for deed if possible. If the seller is willing to finance the sale, and the buyer finds this convenient or necessary, a purchase-money mortgage should be considered.

d. Statute of Frauds. By statutes referred to as statutes of fraud, the law requires that certain contracts be in writing. These statutes generally include conveyances of real property. In Minnesota, no interest in real property including trust powers, except leases of less than one year, can be conveyed unless a writing is made of the contract and it is signed by the party by whom the lease or sale is made. <sup>1/</sup> Contracts without such a writing are void. <sup>2/</sup> The purpose behind the statute of frauds is to enforce a public policy of preventing enforcement by means of fraud and perjury of contracts that were never made. <sup>3/</sup> Although occasional harsh results may obtain and the courts will be unable to enforce oral contracts which they would like to enforce, the statute does prevent false claims by one person that another orally agreed to sell his land to such first person.

The statute of frauds does not require that the contract itself be in writing. A note or memorandum of an oral contract is sufficient if it meets the other requirements of the rule. <sup>4/</sup> To satisfy the statute of frauds, a written contract need only provide that degree of certainty reasonably necessary to identify the parties, the land conveyed, and the terms and conditions of the promises made by the respective parties. <sup>5/</sup> For a contract for the sale of land to be enforceable, it must be sufficiently definite

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<sup>1/</sup> Minn. Stat. Ann. § 513.04 (West).

<sup>2/</sup> Minn. Stat. Ann. § 513.05 (West).

<sup>3/</sup> Radhe v. Brenon, 271 Minn. 35, 134 N.W. 2d 887 (1965).

<sup>4/</sup> See Quinn v. Champagne, 38 Minn. 322, 37 N.W. 451 (1888).

<sup>5/</sup> Doyle v. Wohlrabe, 243 Minn. 107, 66 N.W. 2d 757 (1955).

so that all the terms of the contract can be determined from information given by the contract or writing. <sup>6/</sup>

Admitting that an oral contract exists does not deprive one of the benefit of the statute of frauds where it is used as a defense to an action for specific performance. <sup>7/</sup> In other words, even if seller admits that he agreed orally to sell his land to buyer, the contract is still not enforceable because it is not in writing.

A different situation exists if the buyer relies to his detriment on the oral contract. Courts can compel specific performance based on such "part performance." <sup>8/</sup> If the buyer can show that he will suffer unjust and irreparable injury if the seller is allowed to rely on the statute of frauds, the court will enforce the contract. <sup>9/</sup> However, this part performance must be done in reliance upon and pursuant to the existing contract. <sup>10/</sup> If the buyer sells property at a sacrifice in order to finance property he is buying under an oral contract, this will be ancillary to or preparatory to the contract and will not compel specific performance. <sup>11/</sup> However, preparing the land for seed or any such direct act involving the actual property is probably sufficiently direct to compel specific performance.

A party leasing farm land which he believes he has an oral contract to buy cannot sue the lessor for damages even if he knows

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<sup>6/</sup> Lake Co. v. Molan, 269 Minn. 490, 131 N.W. 2d 734 (1965).  
<sup>7/</sup> Holste v. Baker, 223 Minn. 321, 26 N.W. 2d 473 (1947).  
<sup>8/</sup> Minn. Stat. Ann. § 513.06 (West).  
<sup>9/</sup> Burke v. Fine, 236 Minn. 52, 51 N.W. 2d 818 (1952).  
<sup>10/</sup> Ruble v. Ruble, 234 Minn. 15, 47 N.W. 2d 420 (1951).  
<sup>11/</sup> Id.

the lessor is going to break the contract. <sup>12/</sup> But the leasing party may be able to claim reimbursement for the reasonable value of services such as plowing and fertilizing performed pursuant to the oral contract. <sup>13/</sup>

The time for acceptance of an offer for the sale of land embodied in an option agreement cannot be extended except by writing. <sup>14/</sup> Even if the offeree shows that the offeror orally agreed to extend the time, this will not prevent (equitable estoppel) the offeror from relying on the statute of frauds to avoid the oral contract. <sup>15/</sup>

An agreement to relocate an easement is also within the statute of frauds. <sup>16/</sup> But if the easement relocation is significantly under way, one party may be prevented from relying on the statute of frauds, and the new easement will be regarded as substituted for the old. <sup>17/</sup>

In order for an oral gift of real property to be enforceable, the receiver of the property must be in possession, must have accepted the gift and must have relied to such an extent on the gift that it would be a substantial injustice to hold the gift void. <sup>18/</sup> A possible example of such reliance would be the purchase of livestock, after which the price dropped significantly, in

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<sup>12/</sup> Dale v. Fillenworth, 282 Minn. 7, 162 N.W.2d 234 (1968) (anticipatory breach).

<sup>13/</sup> Id. (unjust enrichment).

<sup>14/</sup> Rooney v. Dayton Hudson Corp., Minn. , 246 N.W.2d 170 (1976).

<sup>15/</sup> Id.

<sup>16/</sup> Alstad v. Boyer, 228 Minn. 207, 37 N.W.2d 372 (1949).

<sup>17/</sup> Davidson v. Kretz, 122 Minn. 313, 149 N.W. 652 (1914).

<sup>18/</sup> E.g., Trebesch v. Trebesch, 130 Minn. 368, 153 N.W. 754 (1915).

expectation of the use of the land.

In summary, all conveyances of any interest in real property, except for a lease of less than one year, should be in writing to avoid problems with the statute of frauds.

e. Homestead Exemption. A house owned and occupied by one who is in debt as his dwelling place, together with the land on which it is situated, is exempt from seizure or sale under legal process on account of debt except for debts from work or materials furnished in the construction, repair, or improvement of the houses or debts for services performed by laborers or servants. <sup>1/</sup> The test of "owned or occupied" is whether ownership and occupancy afford a community connection of such significance as to give reason to believe that preservation of that connection will in the long run make the debtor and his family better able to fulfill their social obligation to be self-sustaining. <sup>2/</sup>

The homestead of one who lives on a farm is defined differently than the homestead of one who lives in a city. The homestead of a farmer may include any quantity of land up to 80 acres not included in the laid out or platted portion of a city. <sup>3/</sup> If within the laid out or platted portion of a city, the area can't exceed one half of an acre. <sup>4/</sup> This means that if both a farmer and a city dweller live in single family dwelling units approximately equal in value, the farmer will have a significantly larger share of his assets protected from his creditors than will the city dweller. On the other hand, the city dweller could use the 1/2 acre to erect an aptment house and the rentals therefrom along with the total value of the apartment would both be exempt from creditors. <sup>5/</sup>

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<sup>1/</sup> Minn. Stat. Ann. § 510.01 (West).

<sup>2/</sup> Denzer v. Prendergast, 267 Minn. 212, 12 N.W.2d 440 (1964).

<sup>3/</sup> Minn. Stat. Ann. § 510.02 (West).

<sup>4/</sup> Id.

<sup>5/</sup> Wilson v. First National Bank of Mankato, 239 Minn. 550, 60 N.W.2d 69 (1953).



Once a debt exists (and is not a lien on the property), the area of the homestead cannot be enlarged or reduced by platting of additional land or vacation of existing plats. 6/

The homestead exemption extends to the debts of either spouse regardless of which of the spouses has title. 7/ But it does not extend to any mortgage lawfully obtained, to any valid tax or assessment lien, or to laborers or material men's liens. 8/

Proceeds from the sale of a homestead are exempt for one year. 9/ If a new homestead is acquired concurrently with the sale of the previous homestead, a double exemption covering the homestead and the sale proceeds is lawful even if the proceeds are not applied to the purchase. 10/

A homestead, or the proceeds from the sale of the homestead during administration of an estate, is exempt from state inheritance tax up to a value of \$45,000. 11/ If the estate has no property qualifying for the homestead exemption, a \$10,000 exemption is allowed for other property. 12/

Minnesota establishes different classes of property for property tax purposes. These classes are taxed at different rates. A farm homestead is class 36, which means it is valued and assessed at 20% of market value. 13/ This is limited to 120 acres but must

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6/ Minn. Stat. Ann. § 510.03 (West).  
7/ Minn. Stat. Ann. § 510.04 (West).  
8/ Minn. Stat. Ann. § 510.05 (West).  
9/ Minn. Stat. Ann. § 510.07 (West).  
10/ O'Brien v. Johnson, 275 Minn. 305, 148 N.W.2d 357 (1967).  
11/ Minn. Stat. Ann. § 291.05 (West).  
12/ Id.  
13/ Minn. Stat. Ann. § 273.13 subd. 6 (West).

be contiguous acreage of 10 or more acres primarily used during the preceding year for agricultural purposes. <sup>14/</sup> It also includes areas of less than 10 acres if used principally for raising poultry, livestock, fruit, vegetables or other agricultural products. <sup>15/</sup>

A family farm corporation or partnership is entitled to a homestead credit as described above if the homestead is occupied by a shareholder or partner who is residing on the land and actively engaged in farming the land owned by the corporation or partnership. <sup>16/</sup> Any other residence owned by such a corporation or partnership is entitled to the credit if occupied by a shareholder or partner actively engaged in farming on behalf of the corporation or partnership, but the area is limited to one acre and does not include any buildings except the house. <sup>17/</sup>

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<sup>14/</sup> Id.

<sup>15/</sup> Id.

<sup>16/</sup> Minn. Stat. Ann. § 273.13 subd. 6a.

<sup>17/</sup> Id.

f. Sale of Tax Forfeited, Public Lands.

(1) Veteran of World War I or II.

Any veteran of World War I or World War II in service before June 27, 1950 (and prior to the cessation of hostilities as determined by federal authority), who wants to buy land for agricultural development can apply to the county board to purchase up to 320 acres of contiguous tax-forfeited land which has been classified as non-conservation or agricultural land. <sup>1/</sup> This land must be situated along a public road near a school or bus route and not in an area restricted by county zoning ordinance. <sup>2/</sup>

The veteran must have been honorably discharged and this discharge must be filed with the application. <sup>3/</sup> The application must state: (1) a legal description of the land desired, (2) the total acreage and the acreage which has been under cultivation, (3) that the land is suitable for agricultural purposes and that the applicant intends to develop it as such, (4) that no additional public expenditure need be made to roads or schools, and (5) that the applicant is willing to pay the appraised value of the land plus the value of improvements and standing timber thereon. <sup>4/</sup>

From 1973 to 1976, this act also included veterans of the Korean and Vietnam Wars. <sup>5/</sup>

After it receives the application, the county board must hold a hearing to see if the land meets the required conditions, if the applicant is a veteran, and if the applicant has a reasonable

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<sup>1/</sup> Minn. Stat. Ann. § 282.031 (West).

<sup>2/</sup> Id.

<sup>3/</sup> Id.

<sup>4/</sup> Id.

<sup>5/</sup> See 1973 Amendment, Minn. Stat. Ann. § 282.031 (West).

opportunity of making a living off the land. <sup>6/</sup> If it authorizes the purchase, the resolution shall set forth the purchase price, the down payment (must be at least 10% of total value), the terms of payment, an interest rate of 40%, and the number of acres currently cleared and suitable for cultivation. <sup>7/</sup>

Purchases under this section of the law are given a \$20 per acre credit (up to the purchase price) for land which the county board determines was cleared and placed under cultivation by the purchaser. <sup>8/</sup> To claim this credit, the applicant must file with the county board, and only one such application can be filed on each contract. <sup>9/</sup> The credit is first applied to the outstanding balance and the taxes due. <sup>10/</sup>

Once land is purchased under this section, it should be withdrawn from a public sale even though the sale has been advertised and the date of the sale fixed. <sup>11/</sup>

The phrase "making his living thereon" in the statute authorizing purchase of the land means that the veteran is sustaining himself in an economic sense on the land, and it is not required that he maintain his dwelling on the land. <sup>12/</sup>

(2) Conservation Purposes.

Any tax-forfeited land which has been classed as non-agricultural

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<sup>6/</sup> Minn. Stat. Ann. § 282.032 (West).

<sup>7/</sup> Id.

<sup>8/</sup> Minn. Stat. Ann. § 282.033 (West).

<sup>9/</sup> Id.

<sup>10/</sup> Id.

<sup>11/</sup> Op. Atty. Gen., 310, April 15, 1959.

<sup>12/</sup> Op. Atty. Gen., 310, August 26, 1947.

(by county board, approved by Commissioner of DNR) <sup>13/</sup> or which has been classified as conservation land<sup>14/</sup> may be designated by resolution of the county board as appropriate and primarily suitable for conservation purposes or for auxiliary forest lands. <sup>15/</sup> After approval of the Commissioner of the Department of Natural Resources, this land can then be sold to a purchaser who agrees to use the land for the designated purposes. <sup>16/</sup>

A separate statute also provides that all land which becomes the property of the state and is classified as non-agricultural <sup>17/</sup> is to be dedicated to conservation. <sup>18/</sup>

(3) County Farms.

When a public charge is afflicted with a communicable disease, the county commissioners of the county where he is such a charge may, by unanimous vote and with the approval of the state board of health, purchase up to 40 acres of farm land and place the afflicted person and his or her family on the farm to operate it. <sup>18/</sup> The commissioners may erect buildings on the property and purchase machinery and livestock necessary to operate the farm. <sup>19/</sup>

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<sup>13/</sup> See Minn. Stat. Ann. § 282.14 (West).  
<sup>14/</sup> See Minn. Stat. Ann. § 282.01 (West).  
<sup>15/</sup> Minn. Stat. Ann. § 282.011 (West).  
<sup>16/</sup> Id.  
<sup>17/</sup> See Minn. Stat. Ann. § 282.14 (West).  
<sup>18/</sup> Minn. Stat. Ann. § 282.22 (West).  
<sup>19/</sup> Minn. Stat. Ann. § 376.52 (West).  
<sup>20/</sup> Id.

## 2. Land Use

The second aspect of real property which is discussed is land use. The primary land use which this book focuses on is agricultural use. This particular division of the book addresses more specific ancillary uses of land which have an impact on the farmer.

The seven areas discussed in the following sections are: mineral rights, trespass, nuisance, game and fish, eminent domain, public use and zoning. Restrictions on land use imposed by will or deed were discussed under transfers of ownership, supra.

## 2. Land Use

### a. Mineral Rights.

#### (1) Private Landowner.

At common law, the owner of land in fee is regarded as the owner of all things beneath the surface. <sup>1/</sup> If a landowner conveys land without a reservation of mineral rights, the conveyance carries with it the mineral rights as well as the surface. <sup>2/</sup> But the landowner in fee may reserve to himself the minerals in the land and the use of the land for mining operations. <sup>3/</sup> In other words, the landowner may sever his land horizontally as well as vertically so that the title to the surface vests in one person and title to the minerals in another. <sup>4/</sup> A severance can extend to different kinds of minerals so that there can be as many different owners as there are kinds of minerals. <sup>5/</sup> Severed mineral rights may be conveyed separately and may be taxed separately. <sup>6/</sup>

Whether or not something is a "mineral" which has been reserved by the person selling property is a question of fact regarding the intent of the parties and should be determined from the entire instrument and the facts and circumstances

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- <sup>1/</sup> Ohio Oil Co. v. Indiana, 177 U.S. 190, 20 S.Ct. 576, 44 L.Ed. 729 (1900).
  - <sup>2/</sup> Montana Mining Co. v. St. Louis Mining and Milling Co., 204 U.S. 204, 27 S.Ct. 254, 51 L.Ed. 444 (1906).
  - <sup>3/</sup> E.g., La Cook Farm Land Co. v. Northern Lumber Co., 159 Minn. 523, 199 N.W. 299 (1924).
  - <sup>4/</sup> Wichelman v. Messner, 250 Minn. 88, 83 N.W.2d 800 (1957).
  - <sup>5/</sup> See, e.g., Beulah Coal Mining Co. v. Heihm, 46 N.D. 646, 180 N.W. 787 (1920).
  - <sup>6/</sup> Bodel Corp. v. State, 249 Minn. 442, 82 N.W.2d 703 (1957).

surrounding the making of the deed. <sup>7/</sup>

Minerals in place are real property and are transferred just like other land and with the same formalities. <sup>8/</sup>

(2) State Reservation of Mineral Rights.

The State of Minnesota has reserved for its own use all the iron, coal, copper, gold, and other valuable minerals in or upon land which it now owns or in the future may own by virtue of any act of Congress. <sup>9/</sup>

The State of Minnesota also reserves mineral rights in all surplus state land that is sold, <sup>10/</sup> in lands transferred to aid in constructing railroads, <sup>11/</sup> in minerals which lie beneath the water of navigable waters, <sup>12/</sup> and in tax-forfeited land which is subsequently sold. <sup>13/</sup> When any state land is conveyed, the instrument should state that the mineral interests are reserved. <sup>14/</sup> Even if the instrument fails to so state, the mineral rights are still reserved to the state. <sup>15/</sup>

All minerals on land sold or otherwise conveyed by the state are the same as minerals on land owned by the state. <sup>16/</sup>

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<sup>7/</sup> Vang v. Mount, 300 Minn. 393, 220 N.W.2d 498 (1974); Resler v. Rogers, 272 Minn. 502, 139 N.W.2d 379 (1965) (sand and gravel held not a "mineral").

<sup>8/</sup> Forbes v. Gracey, 94 U.S. 762, 24 L.Ed. 313 (1876).

<sup>9/</sup> Minn. Stat. Ann. § 93.01 (West). Under this provision, marl is a mineral. Op. Atty. Gen., Feb. 28, 1951. But sand and gravel may or may not be. See Op. Atty. Gen., 311-J, Aug. 13, 1946; Op. Atty. Gen., 755, p. 1079, 1934.

<sup>10/</sup> Minn. Stat. Ann. § 94.14 (West).

<sup>11/</sup> Minn. Stat. Ann. § 93.03. But see Minn. Stat. Ann. § 93.01 (West).

<sup>12/</sup> Minn. Stat. Ann. § 93.06 (West).

<sup>13/</sup> Minn. Stat. Ann. § 282.20 (West).

<sup>14/</sup> Minn. Stat. Ann. § 93.02; 292.225 (West).

<sup>15/</sup> Id.

<sup>16/</sup> Minn. Stat. Ann. § 93.04 (West).



Therefore, the state or its representative has the right to enter and remove minerals from land sold subject to mineral reservation and to construct necessary roads and buildings for so removing. <sup>17/</sup>

When the state reserves mineral rights, the holder of a lease or permit from the state may enter the land to prospect. <sup>18/</sup> Before entering, however, the holder must pay the owner of the surface land an amount which will cover all damages which may arise. <sup>19/</sup> If the holder and the landowner cannot agree on an amount, the holder can request that the Attorney General institute condemnation proceedings and damages will be set pursuant to these proceedings. <sup>20/</sup> The holder of the permit or lease, and not the state of Minnesota, will pay the costs of these proceedings and the damages to the landowner. <sup>21/</sup> The permit or lease holder could also ask the Attorney General to bring an action to quiet title (to determine who owns what interests in the property). <sup>22/</sup>

It is unlawful to mine below the low water mark of waters without the approval of the state of Minnesota. <sup>23/</sup> It is also unlawful to drain any meandered public lake for the purpose of mining without first obtaining consent of the state. <sup>24/</sup> The

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<sup>17/</sup> Id.  
<sup>18/</sup> Minn. Stat. Ann. § 93.05 (West).  
<sup>19/</sup> Id.  
<sup>20/</sup> Id.  
<sup>21/</sup> Id.  
<sup>22/</sup> Minn. Stat. Ann. § 93.055 (West).  
<sup>23/</sup> Minn. Stat. Ann. § 93.34 (West).  
<sup>24/</sup> Id.

penalty for violation of either of these provisions is a maximum of \$10,000 or 5 years or both. <sup>25/</sup>

(3) Several Mineral Interests.

Since January 1, 1970, every owner of an interest in minerals which is owned separately from fee title in the surface must file with the County Recorder in the county wherein the mineral interest is located. <sup>26/</sup> This filing must include a statement setting forth the mineral rights owner's address and his interest in the minerals, plus a legal description of the property involved and the book and page number (or document number) in the records of the County Recorder by which the interest was created or acquired. <sup>27/</sup> This provision of law does not apply to the United States, the state of Minnesota, or to American Indian tribes owning reservation land in Minnesota. <sup>28/</sup>

If the owner of an interest created prior to December 31, 1973 failed to file by January 1, 1975, or if the owner of an interest created after December 31, 1973 fails to file within one year after acquiring such interest, the mineral interests are forfeited to the state. <sup>29/</sup> An owner losing his mineral rights in such a manner may acquire the fair market value of such interest if he brings an action within 6 years. <sup>30/</sup> Forfeiture under this provision of the law does not apply to mineral rights valued and taxed under other laws relating to the taxation of

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<sup>25/</sup> Id.

<sup>26/</sup> Minn. Stat. Ann. § 93.52 (West).

<sup>27/</sup> Id.

<sup>28/</sup> Id.

<sup>29/</sup> Minn. Stat. Ann. § 93.55 (West).

<sup>30/</sup> Id.

minerals. <sup>31/</sup>

(4) Taxation of Severed Interests.

The state legislature has declared that it is necessary to tax severed mineral interests in order to provide fair taxation to a class of real property which has escaped taxation for many years. <sup>32/</sup> As a result, when mineral, gas, coal, or oil rights are owned separately from interests in the surface of the real estate, such rights are assessed and taxed separately, and may be sold for taxes in the same manner as interests in real estate. <sup>33/</sup>

When land is conveyed to the government, and the owner reserves the mineral rights, any structure of the owner of the reserved mineral right shall be assessed and taxed separately from the surface of the land as real estate and the mineral rights shall be assessed and taxed as minerals. <sup>34/</sup> These interests may be sold for taxes. <sup>35/</sup>

All property in the state of Minnesota is classified for property tax purposes. <sup>36/</sup> A "mineral interest" is classified as lb and includes any interest in any minerals, including but limited to gas, coal, or oil, or other similar interest in real estate which is owned separately or apart from fee title in the surface. <sup>37/</sup> This class includes mineral interests filed with

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<sup>31/</sup> Id.

<sup>32/</sup> Minn. Stat. Ann. § 272.039 (West).

<sup>33/</sup> Minn. Stat. Ann. § 272.04 (West).

<sup>34/</sup> Minn. Stat. Ann. § 272.05 (West).

<sup>35/</sup> Id.

<sup>36/</sup> See Minn. Stat. Ann. § 273.13 (West).

<sup>37/</sup> Minn. Stat. Ann. § 273.13, subd. 2a (West).

the County Recorder. <sup>38/</sup> A tax of \$.25 per acre or portion of an acre is imposed on class 1b property and it is payable annually. <sup>39/</sup> The minimum annual tax on any mineral interest is \$2. <sup>40/</sup> This tax is not imposed on mineral interests taxed under other laws or on interests exempt for constitutional or statutory reasons. <sup>41/</sup>

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<sup>38/</sup> Id.  
<sup>39/</sup> Id.  
<sup>40/</sup> Id.  
<sup>41/</sup> Id.

b. Trespass. A discussion of animal trespass can be found under Animals, infra at

(1) Trespass to Realty.

Trespass, as used in this section, is the unlawful entry of one upon premises rightfully in possession of another. <sup>1/</sup> The two essential elements of trespass to realty are right of possession in the owner-plaintiff and wrongful and unlawful entry upon such possession by the trespasser-defendant. <sup>2/</sup> Presumably, Minnesota would follow the majority of states that have decided the issue and allow one who possesses a future interest in the property to bring an action in trespass. <sup>3/</sup>

One who is invited onto premises, either by express invitation or by implied invitation, cannot be a trespasser. <sup>4/</sup> But one who rightfully enters may become a trespasser by refusing to leave. <sup>5/</sup> As a general rule, the mere silence of the landowner is not consent to the trespass. <sup>6/</sup>

There are exceptions to the general rule that unlawful entry is a trespass. For example, a riparian landowner may enter adjoining land to remove obstructions in the channel of a body of water. <sup>7/</sup> Or where logs end up on the land of a riparian

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<sup>1/</sup> Martin v. Smith, 214 Minn. 9, 7 N.W.2d 481 (1942).

<sup>2/</sup> Id.

<sup>3/</sup> E.g., Russell v. Meyer, 7 N.D. 335, 75 N.W. 262 (1898); Brown v. Bridges, 31 Iowa 138 (1871).

<sup>4/</sup> Meixner v. Buecksler, 216 Minn. 586, 13 N.W.2d 754 (1944).

<sup>5/</sup> E.g., Schrunk v. Andres, 221 Minn. 465, 22 N.W.2d 548 (1946).

<sup>6/</sup> Helmer v. Sherlin-Mathieu Lumber Co., 129 Minn. 25, 151 N.W. 421 (1915).

<sup>7/</sup> Reed v. Board, Park Commissioners, 100 Minn. 162, 110 N.W. 1119 (1907).

owner, the owner of the logs may enter to remove them. <sup>8/</sup>

But showing color of title is not an exception, and entering under such constitutes trespass. <sup>9/</sup>

Trespass may consist of an invasion of escaping waters and other substances from adjoining land. <sup>10/</sup>

(2) Damages for Trespass.

There need not be any actual damage to constitute a trespass. For example, shooting over land of another has been held to be trespass. <sup>11/</sup> Every trespass gives a right to at least nominal damages. <sup>12/</sup>

As a general rule, the trespasser is responsible for all damages proximately caused to the property and to the person of the owner. <sup>13/</sup> But there are different measures for damages. For wrongfully withholding property <sup>14/</sup> or for a continuing trespass, <sup>15/</sup> damages may be the reasonable rental value throughout such period. If the injury is permanent, destruction of the property itself, damage is the diminution in the value of the property, or the difference in value immediately before and after trespass. <sup>16/</sup> If such property can be restored for less than cost,

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<sup>8/</sup> Plaude v. Mississippi and Rum River Boom Co., 141 Minn. 170, 169 N.W. 600 (1918).  
<sup>9/</sup> Sanborn v. Sturtevant, 17 Minn. 200 (G.I. 174) (1871).  
<sup>10/</sup> Bridgeman-Russell Co. v. Duluth, 158 Minn. 509, 197 N.W. 971 (1924).  
<sup>11/</sup> Whittaker v. Stangvick, 100 Minn. 386, 111 N.W. 295 (1907).  
<sup>12/</sup> E.g., Smith v. Gvirtzman, 109 Colo. 314, 124 P.2d 926 (1942).  
<sup>13/</sup> Wildwood Mink Ranch v. United States, 218 F.Supp. 67 (D.Minn. 1963).  
<sup>14/</sup> Schrunck, *supra* at footnote 5.  
<sup>15/</sup> Kortsam v. Poor Richard, Inc., 390 Minn. 339, 188 N.W.2d 415 (1971).  
<sup>16/</sup> E.g., Lynch v. Minnesota Power and Light Co., 174 Minn. 443, 219 N.W. 459 (1928).

the measure of damages is the cost of restoration. <sup>17/</sup>

Damages for loss of future profits will be allowed if provable. <sup>18/</sup> If one enters property in an emergency to protect property, courts will usually restrict compensation to damage actually suffered. <sup>19/</sup>

For a single trespass, the injured party can recover all damages, present and prospective, which he can show with reasonable certainty will result from the trespass. <sup>20/</sup>

In the proper situation, damages may be recovered for mental disturbance resulting from trespass. <sup>21/</sup>

Treble damages are statutorily authorized when the trespasser carries away, uses, or destroys wood, timber, lumber, hay, or grass or other personal property without authority. <sup>22/</sup> If the trespasser shows that he thought the property was his own, or was owned by a person for whom he acted, the landowner will receive only actual damages, plus costs. An early Minnesota case <sup>24/</sup> has restricted "or other personal property" to things which are products of the soil. The words connote only objects of the same kind and class as the preceding words. <sup>25/</sup> Most of

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<sup>17/</sup> Jones v. Al Johnson Construction Co., 211 Minn. 213, 300 N.W. 447 (1941).

<sup>18/</sup> Weinman v. DePalma, 232 U.S. 571, 34 S.Ct. 370, 58 L.Ed. 733 (1914).

<sup>19/</sup> Currie v. Silvernagle, 142 Minn. 254, 171 N.W. 782 (1919).

<sup>20/</sup> E.g., Lesch v. Great Northern Railway Co., 97 Minn. 503, 106 N.W. 955 (1906).

<sup>21/</sup> Wildwood Mink Ranch, supra at footnote 3.

<sup>22/</sup> Minn. Stat. Ann. § 548.05 (West). See also Minn. Stat. Ann. § 561.04 (West).

<sup>23/</sup> Id.

<sup>24/</sup> Berg v. Baldwin, 31 Minn. 541, 18 N.W. 821 (1884).

<sup>25/</sup> Id.

the cases interpreting this statute have involved trees and timber. No case has directly decided whether "or other personal property" might include crops not of a perennial nature. The Berg case, which restricted these words to products of the soil, involved a trespasser taking two steers and thus did not decide whether non-perennial crops were of the same kind and class as the preceding words, tree, grass, etc.

The measure of damages for the loss or destruction of a growing annual crop is its value at the time of the injury to be determined from facts then existing. <sup>26/</sup> Damage to crops may be estimated by taking the difference between the value of the land with the crop and without it. <sup>27/</sup> Where one person enters a premises under a bona fide claim of title and cuts grass for hay, and the title is ultimately adjudged to be in another, the measure of damages is the standing grass and not the value of the hay removed. <sup>28/</sup>

(3) Criminal Trespass.

It is a misdemeanor, and thus punishable by 90 days or \$300 or both, <sup>29/</sup> to do any of the following:

- (1) Trespass upon the premises of another, and without claim of right, refuse to depart therefrom on demand of the lawful possessor.
- (2) To occupy or enter the dwelling of another without claim of right or consent of the owner or consent of one who has

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<sup>26/</sup> See Dun Dig. (3d. Ed.) § 2577.

<sup>27/</sup> Koch v. Speiser, 145 Minn. 227, 176 N.W. 754 (1920).

<sup>28/</sup> Hinman v. Heyderstadt, 32 Minn. 250, 20 N.W. 155 (1884).

<sup>29/</sup> Minn. Stat. Ann. § 609.02, subd. 3 (West).



the right to give consent except in an emergency situation (dwelling means usual place of residence).

- (3) To enter the premises of another with intent to take or injure any fruit, fruit trees, or vegetables growing thereon without the permission of the owner or occupant.
- (4) To permit an animal under one's control to go onto a railroad track.
- (5) To permit domestic animals or fowl under one's control to go upon the land of another within a city.
- (6) To take any animal upon a public conveyance without the consent of the operator.

Whoever sets a spring gun, pit fall, deadfall, snare or other like dangerous weapon or device can be sentenced to 6 months or \$5000 or both. 31/

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31/ Minn. Stat. Ann. § 609.665 (West).

c. Nuisance.

(1) Generally.

At common law, a nuisance is an interference with a landowner's use and enjoyment of his property. <sup>1/</sup> Anything injurious to health, or indecent or offensive to the senses, or an obstruction to the free use of property so as to interfere with the comfortable enjoyment of life or property is a nuisance. <sup>2/</sup> An action may be brought by any person whose property is injuriously affected. <sup>3/</sup> The nuisance may be enjoined or abated by the court, and damages may be recovered. <sup>4/</sup>

The discussion in this monograph is generally concerned only with private nuisances, and does not discuss the public nuisance. <sup>5/</sup> The basic criterion of a private nuisance is reasonableness. <sup>6/</sup> Reasonableness requires consideration of the conduct complained of and the consequences of this conduct outside the boundaries of the person committing the acts which are alleged to create a nuisance. <sup>7/</sup> Conduct is unreasonable when it violates a protected interest of a neighbor. <sup>8/</sup>

In determining whether a nuisance exists, the social utility of the defendant's conduct is weighed against the gravity of

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<sup>1/</sup> See McRae, The Development of Nuisance in the Early Common Law, 1 U.Fla. L.Rev. 27 (1948).

<sup>2/</sup> Minn. Stat. Ann. § 561.01 (West).

<sup>3/</sup> Id.

<sup>4/</sup> Id.

<sup>5/</sup> Public nuisance is defined by criminal statute. Minn. Stat. Ann. § 609.74, 609.745 (West).

<sup>6/</sup> 5 Powell, The Law of Real Property § 704 (1st. Ed. 1976).

<sup>7/</sup> Id.

<sup>8/</sup> Id.

harm to the landowner-plaintiff. <sup>9/</sup> Under this formula, a farming activity is less likely to be found a nuisance because of its high social utility.

(2) Actions Creating a Nuisance.

The nature and extent of the plaintiff's harm is a vital factor. <sup>10/</sup> Courts are more sympathetic to tangible destruction of property such as destroyed crops or trees than they are to discomforts such as noise and odor but loud noises, foul odor, insects, flashing bright lights, and difficulty in keeping a premises clean have been held to create a nuisance. <sup>11/</sup>

Noise alone may be of such character and volume as to constitute a nuisance, abatable during usual hours of sleep, even though greater and more distracting noise during daylight hours may not be such. <sup>12/</sup> The location of the noise making activity will be considered in determining whether the level of noise constitutes a nuisance. <sup>13/</sup>

Keeping of animals which create an odor is not a nuisance per se, but will become a nuisance if the operation is managed in such a way that strong odors emanate from it. <sup>14/</sup> Most jurisdictions follow this rule and hold that piggeries or chicken

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<sup>9/</sup> Restatement of Torts sec. 826 (1936). For application see *Patterson v. Peabody Coal Co.*, 122 N.E.2d 48 (Ill. 1954); *Hatch v. W.S. Hatch Co.*, 3 Utah 2d 295, 283 P.2d 217 (1955).  
<sup>10/</sup> 5 Powell, *The Law of Real Property* § 705 (1st Ed. 1976). See also Restatement of Torts sec. 827 (1936), comment b.  
<sup>11/</sup> See 5 Powell, *The Law of Real Property* § 705 (1st Ed. 1976).  
<sup>12/</sup> *Roukovina v. Island Farm Creamery Co.*, 160 Minn. 335, 220 N.W. 350 (1924) (Loading milkwagons at 3-4 a.m.).  
<sup>13/</sup> See *Wadena v. Folkestad*, 194 Minn. 146, 260 N.W. 221 (1935).  
<sup>14/</sup> E.g., *Lead v. Inch*, 116 Minn. 467, 134 N.W. 218 (1912). See also *Robinson v. Westman*, 224 Minn. 105, 29 N.W.2d 1 (1947).

houses are not a nuisance per se because of their odor but can become such by the manner in which they are operated. <sup>15/</sup>

One case has held that an 80,000 chicken facility was a nuisance because its odor was markedly stronger than other livestock operations. <sup>16/</sup> Another recent case held that when a housing development grew to the extent that the odors and insects of a previously remote cattle feeding operation became a nuisance, the operation could be enjoined, but the developer had to pay the feedlot operator the reasonable cost of closing and relocating. <sup>17/</sup> The Minnesota Supreme Court has held that if a poultry and pig operation is a nuisance, the jury cannot deny plaintiff relief just because an opposite result would have an adverse effect on the poultry business. <sup>18/</sup>

(3) Defenses to a Nuisance.

A nuisance defendant has four basic defenses to liability: <sup>19/</sup>  
(1) acquiescence which can be reliance on an intention not to sue or coming to a nuisance (which has been almost totally abolished in Minnesota <sup>20/</sup>), (2) statute of limitations which begins to run with the plaintiff's injury, (3) prescription or implied grant which must have continued to run in substantially the same way

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<sup>15/</sup> See Annot., 2 A.L.R.3d 935 (1965); Annot. 2A.L.R.3d 965 (1965).

<sup>16/</sup> Patz v. Farmegg Products Inc., 196 N.W.2d 557 (Iowa 1972).

<sup>17/</sup> Spur Industries Inc. v. Del E. Webb Development Co., 494 P.2d 700 (Ariz. 1972).

<sup>18/</sup> Schrupp v. Hanson, Minn., 235 N.W.2d 822 (1975).

<sup>19/</sup> Powell, The Law of Real Property § 706 (1st. Ed. 1976).

<sup>20/</sup> Brede v. Minnesota Crushed Stone Co., 143 Minn. 374, 173 N.W. 805 (1919).

with equally injurious results for an entire statutory period, 21/ or (4) legislative authorization which is usually only available to quasi-public entities such as railroads or airports. The legislature cannot authorize the maintenance of a nuisance without compensation to one specifically injured thereby. 22/

Relief may also be denied under the balance of convenience doctrine of a recent landmark case whereby relief is denied if the injury is relatively small in magnitude and abatement or injunction causes substantial loss to the defendant. 23/ This case involved an attempt by a small shop owner who was the unfortunate recipient of a cement company's dust to enjoin further manufacturing by the cement company. The economic size of the cement company and the number of employees it employed were important considerations to the court. 24/

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21/ Herrman v. Larson, 214 Minn. 46, 7 N.W.2d 330 (1943) (drainage of creamery waste onto plaintiff's land so that it submerged a part of the pasture, killed vegetation, and created noxious odors is a nuisance without prescriptive right). See also Schmidt v. Maplevue, 293 Minn. 106, 196 N.W.2d 626 (1972).

22/ Stuhl v. Great Northern Railway Co., 136 Minn. 158, 161 N.W. 501 (1917).

23/ Boomer v. Atlantic Cement Co., 26 N.Y.2d 219, 257 N.E.2d 820, 309 N.Y.S.2d 313 (1970).

24/ Id.

d. Game and Fish.

(1) State Owns.

The state of Minnesota owns the wild animals <sup>1/</sup> found within its boundaries and they cannot be destroyed except as authorized by law. <sup>2/</sup> Wild animals caught or killed can be reclaimed by the state. <sup>3/</sup> The same applies to fish unlawfully taken by commercial fishermen <sup>4/</sup> and to wild fur bearing animals. <sup>5/</sup>

(2) Landowners Exempt.

The resident landowner or lessee of land occupied by himself as a permanent abode, and any member of his immediate family, may take small game by legal firearms or by bow and arrow and may trap protected fur bearing animals upon his lands without procuring a small game license at any time not otherwise prohibited by law. <sup>6/</sup> But the Attorney General has stated that an owner of a private lake which is not meandered must obtain a fishing license in order to fish in that lake. <sup>7/</sup>

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<sup>1/</sup> Also the wild rice and aquatic vegetation.

<sup>2/</sup> Minn. Stat. Ann. § 97.42 (West).

<sup>3/</sup> Thomas v. Northern Pacific Express Co., 73 Minn. 185, 75 N.W. 1120 (1898).

<sup>4/</sup> Op. Atty. Gen., 211-A-8, Dec. 4, 1952.

<sup>5/</sup> Op. Atty. Gen., 210-B-9, Oct. 15, 1926.

<sup>6/</sup> Minn. Stat. Ann. § 98.47 (West).

<sup>7/</sup> Op. Atty. Gen., No. 121, p. 194, 1932.

(3) Entering Agricultural Land

No person can enter the agricultural land of another for any recreational purpose unless the permission of the owner, occupant, or lessee is first obtained. <sup>8/</sup> Recreational purposes include hunting, trapping, fishing, swimming, boating, camping, picnicing, hiking, snowmobiling, and other similar activities. <sup>9/</sup> Agricultural land is defined as that which is being used to raise agricultural products, or to enclose domestic livestock, except for land that is located within 66 feet of the water's edge of streams or lakes. <sup>10/</sup>

A person using the land of another for a recreational purpose is required to close any gate he may have used and is prohibited from destroying or tearing down any fence, building, grain, crops, or live trees. <sup>11/</sup>

A person hunting any wild animal with a firearm on private agricultural land not his own must get specific permission to do so from the owner or occupant of the premises. <sup>12/</sup> Those who are

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<sup>8/</sup> Act of April 7, 1978, ch. 794, § 2, 1978 Minn. Sess. Law Serv. (West), amending Minn. Stat. § 100.273 (1976). This new trespass statute consolidates some of the old law regulating trespass on agricultural land and also adds some new provisions. The prior statute defined "agricultural land" in such a way that all wooded areas other than tree farms were excluded. Minn. Stat. § 100.273(1) (1976). The new statute no longer excludes wooded areas from its coverage, but it does provide one new exception to the trespassing rule. A person using dogs to hunt raccoon may enter private land without permission from the owner when his dogs have treed a raccoon on such land. He may enter only for the purpose of retrieving his dogs and must leave the premises immediately after doing so. Act of April 7, 1978, ch. 794, § 2, 1978 Minn. Sess. Law Serv. (West), to be codified as Minn. Stat. § 100.273(7).

<sup>9/</sup> Minn. Stat. § 87.021(4) (1976). By incorporating the definition of "recreational purpose" found in § 100.273(1), the new trespass law covers many more activities than the old one. Prior to the amendment, the statute regulating trespass on agricultural lands referred only to hunting. See, Minn. Stat. § 100.273(1) (1976).

<sup>10/</sup> Act of April 7, 1978, ch. 794, § 2, 1978 Minn. Sess. Law Serv. (West) to be codified as Minn. Stat. § 100.273(1).

<sup>11/</sup> Act of April 7, 1978, ch. 794, § 2, 1978 Minn. Sess. Law Serv. (West), to be codified as Minn. Stat. § 100.273(4).

<sup>12/</sup> Act of April 7, 1978, ch. 794, § 2, 1978 Minn. Sess. Law Serv. (West), to be codified as Minn. Stat. § 100.273(5).

hunting on any public right-of-way that is located within 500 feet of any building occupied by a human being or livestock, or within 500 feet of any stockade or corral containing livestock, must also get permission from the owner or occupant of those buildings. <sup>13/</sup>

A person cannot erect a "no hunting," "no trespassing," or "no fishing" sign upon any land in which he has no right, title, interest, or license. <sup>14/</sup>

Aviolation of any of the provisions of this trespass statute is a misdemeanor, and upon conviction the violator's hunting, fishing, or trapping license becomes null and void. <sup>15/</sup> All peace officers, as well as the conservation officers, are responsible for enforcing the provisions of the statute. <sup>16/</sup>

The Commissioner of the Department of Natural Resources is required to include a summary of the trespass law in the syllabus of state laws relating to wild animals that is compiled after each legislative session. <sup>17/</sup> A copy of this syllabus is furnished to each person procuring a hunting, fishing, or trapping license.

A landowner can hunt on his own land even if he has it posted. <sup>18/</sup> But if a nonowner hunts on posted land, the animals belong to the State. <sup>19/</sup> The owner of the soil has the exclusive privilege of

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<sup>13/</sup> Id.

<sup>14/</sup> Act of April 7, 1978, ch. 794, § 2, 1978 Minn. Sess. Law Serv. (West), to be codified as Minn. Stat. § 100.273(6).

<sup>15/</sup> Act of April 7, 1978, ch. 794, § 2, 1978 Minn. Sess. Law Serv. (West), to be codified as Minn. Stat. § 100.273(9).

<sup>16/</sup> Act of April 7, 1978, ch. 794, § 2, 1978 Minn. Sess. Law Serv. (West), to be codified as Minn. Stat. § 100.273(8).

<sup>17/</sup> Act of April 7, 1978, ch. 794, § 1, 1978 Minn. Sess. Law Serv. (West), amending Minn. Stat. § 97.53 (1976).

<sup>18/</sup> Op. Atty. Gen., 210-A-4, Dec. 9, 1929.

<sup>19/</sup> Op. Atty. Gen., No. 7, p. 33, 1942.



hunting, including the unqualified right to control and protect wild game on his land. 19a/ An easement for a public highway does not surrender the owner's right to foster and protect wild game on his land, and the public has no right to pursue and kill game while it is temporarily passing to and fro across the highway. 19b/

(4) Wild Game Damage to Property, Predator Control.

When will game damages private property, the Commissioner of Natural Resources may permit the taking of such animals, whether caught in the act or not, in such manner as may be necessary to prevent further damage and may permit the disposition of the animal as he thinks proper. 20/

If the Commissioner of Natural Resources has reason to believe that a predator 21/ is causing damage to domestic or wild animals and determines that corrective action is necessary, he can request a controller 22/ to take the predators by any method authorized for taking unprotected animals. 23/ The Commissioner must specify the county or other defined area, the objectives, the payments to be made and the methods to be used. 24/ The

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19a/ L. Realty Co. v. Johnson, 92 Minn. 363, 100 N.W. 94 (1904).

19b/ Id.

20/ Op. Atty. Gen., 844-G-3, Dec. 17, 1927.

21/ Wolf, coyote, brush wolf, fox, lynx, or bobcat. Minn. Stat. Ann. § 97.487(2) (West).

22/ Person certified by the Commissioner of Natural Resources to kill predators. Minn. Stat. Ann. § 97.487(2) (West).

23/ Minn. Stat. Ann. § 97.487(3) (West).

24/ Id.

controllers must cease when their objectives have been met or when so directed by the commissioner. <sup>25/</sup>

The commissioner of natural resources must certify controllers based on their experience, reliability, and ability. <sup>26/</sup> In an application to become a controller, the applicant must file with his application a report from a conservation officer. <sup>27/</sup>

Pay for controllers cannot be over \$60 nor less than \$25 for a wolf, brush wolf, or coyote. <sup>28/</sup> Pay for other predators may be as determined. <sup>29/</sup> The commissioner may require a signed statement of information that the predator has been taken. <sup>30/</sup> Making a fraudulent payment claim is a misdemeanor. <sup>31/</sup>

The commissioner may also issue special permits, with or without a fee, to take any protected wild animals which are doing damage to private or public property in accordance with such rules and regulations as his department may have prescribed. <sup>32/</sup>

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<sup>25/</sup> Id.

<sup>26/</sup> Minn. Stat. Ann. § 97.487(4) (West).

<sup>27/</sup> Id.

<sup>28/</sup> Minn. Stat. Ann. § 97.487(5) (West).

<sup>29/</sup> Id.

<sup>30/</sup> Id.

<sup>31/</sup> Minn. Stat. Ann. § 97.487(6) (West).

<sup>32/</sup> Minn. Stat. Ann. § 98.48(5) (West). The license and seal provisions do not apply to the taking of beaver.

e. Eminent Domain.

(1) In General.

Eminent domain is the right of the state <sup>1/</sup> or nation to take private property for public use (and only for public use) without the consent of the owner <sup>2/</sup> conditioned upon payment of just compensation. <sup>3/</sup> In a legal sense, eminent domain is a purchase and sale. <sup>4/</sup>

The power of eminent domain is conferred by statute <sup>5/</sup> and not by Constitution. <sup>6/</sup> The mode of exercising the power is a matter of legislative discretion. <sup>7/</sup> The only judicial questions are whether a planned use is a public use and the adequacy of the consideration. <sup>8/</sup> The exercise of the power of eminent domain presents political questions and rests within the exclusive control and discretion of the legislature, and may be determined without notice to owners of property affected. <sup>9/</sup>

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- <sup>1/</sup> State may and does delegate this authority to railroads, electric cooperatives, state agencies, political subdivisions, etc.
  - <sup>2/</sup> Refusal to sell is not, of course, a prerequisite. *School District v. Bolstad*, 121 Minn. 376, 141 N.W. 801 (1913).
  - <sup>3/</sup> E.g., *State v. Bentley*, 216 Minn. 146, 12 N.W.2d 347 (1943). See also Minn. Const. art. 1, sec. 13, which requires just compensation for a taking of private property.
  - <sup>4/</sup> *Summers v. Midland Co.*, 167 Minn. 453, 209 N.W. 323 (1926).
  - <sup>5/</sup> Minn. Stat. Ann. § 117.011 (West).
  - <sup>6/</sup> E.g., *Burnquist v. Flach*, 213 Minn. 353, 6 N.W.2d 805 (1942).
  - <sup>7/</sup> E.g., *State v. Houghton*, 144 Minn. 1, 174 N.W. 885, 176 N.W. 159 (1919); Minn. Stat. Ann. § 117.011 et seq. (West).
  - <sup>8/</sup> *Housing and Redevelopment Authority of St. Paul v. Greenman*, 255 Minn. 396, 96 N.W.2d 673 (1959).
  - <sup>9/</sup> Id.

(2) What is a Taking?

A taking under the right of eminent domain includes every interference with possession, enjoyment or value of private property. <sup>10/</sup>

Land can be taken by flooding which raises the water table so as to soak the land and destroy its agricultural value. <sup>11/</sup>  
It is immaterial whether the destructive effects result from the invasion of water from without or by blocking of normal drainage by surface and subsurface waters. <sup>12/</sup>

(3) Easement Includes Snow Fence.

When the state, or an agency or political subdivision, acquires a right to establish a public road, included in the easement is the power to erect and maintain temporary snow fences as may be required unless this right has been specifically disclaimed. <sup>13/</sup> This right is taken into consideration in awarding damages for condemnation and any such award is conclusively presumed to include such damages. <sup>14/</sup>

It is clear that in the absence of this statutory authority, an attempt to place a fence on private property without the owners consent would be an unconstitutional taking of property without due process and without compensation. <sup>15/</sup>

Much of the land through which highway easements have been

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<sup>10/</sup> Minn. Stat. Ann. § 117.025(2) (West).

<sup>11/</sup> Nelson v. Wilson, 239 Minn. 164, 59 N.W.2d 330 (1953).

<sup>12/</sup> Id.

<sup>13/</sup> Minn. Stat. Ann. § 117.21 (West).

<sup>14/</sup> Id.

<sup>15/</sup> See Op. Atty. Gen., No. 478, p. 727, 1934.

taken is agricultural land and it will be subject to this provision of the law.

(4) Unity in Noncontiguous Tracts.

In eminent domain proceedings, <sup>16/</sup> noncontiguous tracts may be considered as a unit for purposes of assessment of damages for a taking from only one of such tracts provided that the use to which the tracts are applied is so connected that the taking from one in fact damages the other. <sup>17/</sup>

There are several possible situations where the taking of one noncontiguous tract of agricultural land would affect the value of another tract. One such situation would be when one tract is used to raise hay or feed for animals pastured on another tract. If the farmer were to lose the tract used for raising feed, the pasture tract would not be as valuable because the farmer would now have to purchase feed. A prospective buyer probably would pay more for pasture accompanied by land used to raise feed than he would for the same size pasture which is not accompanied by feed growing land.

Any situation where the use of one tract of agricultural land complements or supplements the agricultural activity on another tract of land is potentially within this section of the law should either tract be condemned.

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<sup>16/</sup> Pursuant to Minn. Stat. Ann. § 117.011 et seq. (West). Note that condemnation for drainage purposes is not covered by this chapter. See Water and Drainage Law, infra at

<sup>17/</sup> Minn. Stat. Ann. § 117.086 (West).

(5) Compensation.

All taking of land by eminent domain must be accompanied by just compensation to the landowner. <sup>18/</sup>

In condemnation proceedings, the owner of land is entitled to the market value of property taken for the use to which the land may have most advantageously been put and for which it would sell for the highest price in the market. <sup>19/</sup> In other words, when land next to a municipality is currently being used for agricultural purposes, and this land would have greater value if developed, the condemnation award should be based on the development value. A condemnee may show the highest and best use to which property may be adopted regardless of whether it is so used at the time of taking. <sup>20/</sup> But if the land is still undeveloped, the condemnation price is based on what a single buyer would pay for the land, not on how much it could be sold for in single lots. <sup>21/</sup> If the land is developed, market value may take into consideration the prices individual buyers would pay for each lot. <sup>22/</sup>

Any competent evidence may be considered if it legitimately bears on market value. <sup>23/</sup> The obstruction of the flow of surface water from one part of a tract of land to another by reason of

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<sup>18/</sup> Minn. Const. art. 1, sec. 13.

<sup>19/</sup> E.g., Minneapolis-St. Paul Metropolitan Airport Commission v. Hedberg-Freidheim Co., 226 Minn. 282, 32 N.W.2d 569 (1948).

<sup>20/</sup> Lord v. Malecker, 265 Minn. 1, 120 N.W.2d 36 (1963).

<sup>21/</sup> Id.

<sup>22/</sup> Housing and Redevelopment Authority of St. Paul v. Anderson, 297 Minn. 355, 211 N.W.2d 790 (1973).

<sup>23/</sup> Lord, supra at footnote 20.

the construction of a railroad through such tract may be considered in estimating the damage to the tract by the construction of such road. <sup>24/</sup> Where part of a farm was acquired for construction of an interchange for an interstate highway and no damages to the remaining lands were claimed or awarded, enhancement in the value of the remainder of the farm occasioned by its proximity to the interchange and to expected traffic was not a special benefit (was general) and should not be set off against the amount awarded for land actually taken. <sup>25/</sup> Evidence of the value of the remaining part of the farm including the enhanced value was properly excluded from consideration. <sup>26/</sup>

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<sup>24/</sup> Pfleger v. Hastings and D.R. Co., 28 Minn. 510, 11 N.W. 72 (1881).

<sup>25/</sup> Mattson v. Colon, 292 Minn. 189, 194 N.W.2d 574 (1972).

<sup>26/</sup> Id.

f. Public Use of Private Land.<sup>1/</sup>

It is the policy of the state of Minnesota to promote the use of privately owned lands and waters by the public for beneficial recreational purposes. <sup>1/</sup>

But the owner of land owes no duty or care to render or maintain his premises safe for the entry of persons for recreational purposes. <sup>2/</sup> Specifically, the owner of land owes no duty (1) to render the land safe for entry of motorized recreational vehicles, (2) to warn persons of dangerous conditions on the land, or (3) to curtail his use during its use for recreational purposes, but he must refrain from willful action to cause injury. <sup>3/</sup>

When the landowner directly or indirectly invites or permits, without charge, any person to use his property for recreational purposes he does not thereby (1) extend any assurances that the premises are safe for any purpose, (2) confer on such person the legal status of an invitee or licensee to whom a duty of care is owed, or (3) assume any responsibility or incur any liability for any injury to person or property caused by an act or omission of the invited person. <sup>4/</sup>

These standards of care for the landowner are the same when land is leased to the state or a political subdivision for recreational purposes. <sup>5/</sup>

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<sup>1/</sup> Minn. Stat. Ann. § 87.01 (West).  
<sup>2/</sup> Minn. Stat. Ann. § 87.022 (West).  
<sup>3/</sup> Minn. Stat. Ann. § 87.0221 (West).  
<sup>4/</sup> Minn. Stat. Ann. § 87.023 (West).  
<sup>5/</sup> Minn. Stat. Ann. § 87.024 (West).  
<sup>6/</sup> Minn. Stat. Ann. § 87.025 (West).  
<sup>7/</sup> Minn. Stat. Ann. § 87.026 (West).



The landowner still has liability to recreational visitors which otherwise exists (1) for conduct which, at law, entitles a trespasser to maintain an action and obtain relief for conduct complained of, and (2) for injury suffered when the owner charges the person or persons who enter for recreational use (but leasing it to the state is not considered a "charge"). <sup>6/</sup>

This section of law does not create any duty or care or ground for liability for injury to person or property, nor does it relieve the user of the land of any duty of care he owes in the use of land. <sup>7/</sup>

The dedication of land to the public for recreational purposes does not take effect by use of the land for such purposes regardless of the length of time of such use except as expressly permitted or provided by the owner. <sup>8/</sup> Two exceptions to this rule are highways used by the public for six years and forest trails or portages used by the public for 15 years. <sup>9/</sup>

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<sup>6/</sup> Minn. Stat. Ann. § 87.025 (West).

<sup>7/</sup> Minn. Stat. Ann. § 87.026 (West).

<sup>8/</sup> Minn. Stat. Ann. § 87.03 (West).

<sup>9/</sup> Id. See also Minn. Stat. Ann. §§ 160.05, 160.06 (West).

g. Zoning.

(1) In General.

A zoning ordinance is one which regulates by district building development and the uses of property. <sup>1/</sup> The restrictions it imposes attach to and run with the land. <sup>3/</sup>

Zoning authority derives from police power. <sup>3/</sup> Zoning ordinances operate in the interest of public welfare by restricting the use of property without compensation for loss. <sup>4/</sup>

Preservation of property values, encouragement of appropriate land use, and general safety are among the purposes for zoning. <sup>5/</sup>

Zoning ordinances will be sustained as a legitimate exercise of police power unless they are arbitrary, discriminatory, or an unreasonable application of restrictive provisions. <sup>6/</sup>

(2) Statutory Authority.

In order to promote the health, safety, morals, and general welfare, a municipality may regulate the use of land for among other purposes, agriculture, soil conservation, and water conservation. <sup>7/</sup> Zoning regulation may divide the municipality into districts or zones of suitable numbers, shape, and

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<sup>1/</sup> Orme v. Atlas Gas and Oil Co., 217 Minn. 27, 13 N.W.2d 757 (1944).

<sup>2/</sup> Id.

<sup>3/</sup> Connor v. Chanhassen Township, 249 Minn. 205, 81 N.W.2d 789 (1957).

<sup>4/</sup> Id.

<sup>5/</sup> Hutchinson v. Cotton, 236 Minn. 366, 53 N.W.2d 27 (1952).

<sup>6/</sup> E.g., Hawkins v. Talbot, 248 Minn. 549, 80 N.W.2d 863 (1957).

<sup>7/</sup> Minn. Stat. Ann. § 462.357 (West). For a discussion of the meaning of the word agriculture in a zoning ordinance, see annot., 97 A.L.R.2d 702 (1964).

area. 8/ The regulations must be uniform for each class of land. 9/ A city may zone up to two miles from its incorporated limits (if unincorporated territory), but not in a county or town which has adopted zoning regulations. 10/

A county may, by zoning ordinance, establish districts restricting the use of land and water. 11/ The land uses for which a county may zone include, among others, agricultural use, soil conservation, water supply conservation, and surface water drainage and removal. 12/

Official controls with regard to clearing, grading, excavation, and transporting and filling land may be passed to control sediment and erosion. 13/ The county may require the development of plans to this end before it allows land to be disturbed. 14/ It may require that these plans be submitted to the soil and water conservation district for comment and review. 15/

(3) Detachment of Agricultural Land from a Municipality.

Property which is within a municipality and abutting the municipal boundary, and which is unplatted and used primarily:

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- 8/ Id.  
9/ Id.  
10/ Id. If two municipalities less than 4 miles apart, each may zone one-half the distance to the other.  
11/ Minn. Stat. Ann. § 394.25(2) (West).  
12/ Id.  
13/ Minn. Stat. Ann. § 394.25(9) (West).  
14/ Id.

for agricultural purposes may be detached from the municipality. <sup>16/</sup>  
Land may be so detached even if it is still surrounded by municipalities and is separate from the township of which it becomes a part. <sup>17/</sup>

A proceeding for detachment may be initiated by submitting to the Minnesota municipal commission a resolution of the municipality or by submitting a petition of the owners of the property to be detached. <sup>18/</sup> If the area involved is less than 40 acres, all landowners within the area must sign the petition; if it is over 40 acres, 75% must sign. <sup>19/</sup> The petition must set forth the boundaries and area of land to be detached, the number and character of buildings within the area, the resident population and the municipal improvements, if any, within the area sought to be detached. <sup>20/</sup> If both a resolution and a petition are presented, no hearing is necessary; if only one the commission will designate a time and place and conduct a hearing. <sup>21/</sup>

After the hearing, the commission has the authority to order detachment if it finds that certain prerequisites have been met. <sup>22/</sup> The commission may also decrease the size

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<sup>16/</sup> Minn. Stat. Ann. § 414.06 (West).

<sup>17/</sup> Village of Goodwin v. Winona Area Industrial Development Association, 288 Minn. 378, 184 N.W.2d 662 (1971).

<sup>18/</sup> Minn. Stat. Ann. § 414.06(1) (West).

<sup>19/</sup> Id.

<sup>20/</sup> Id.

<sup>21/</sup> Minn. Stat. Ann. § 414.06(2) (West).

<sup>22/</sup> See Minn. Stat. Ann. § 414.06(3) (West).

of the area to be detached. 23/ The detached area becomes  
part of a township by projecting township boundary lines. 24/  
The commission may relieve the land of existing indebtedness  
of the municipality and require it to assume the indebtedness  
of the township. 25/

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23/ Minn. Stat. Ann. § 414.06(3) (West).

24/ Id.

25/ Id.

B. Personal Property Law

Personal property law is the second major topic in Chapter I. Personal property has been defined as all property that is not real property.<sup>1/</sup> As was discussed earlier,<sup>2/</sup> real property is generally described as land and permanent improvements to land.

Personal property important to farmers includes animals, farm machinery and equipment and harvested crops. This topic addresses each of these three in order. The division on animals discusses a wide range of law from fence law to disease control. The division on equipment concentrates on traffic regulation of farm vehicles. The third division focuses on the storage of grain.

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<sup>1/</sup> See, e.g., *City of Holland v. Fillmore Township*, 363 Mich. 38, 108 N.W.2d 840 (1961).

<sup>2/</sup> Chapter I, topic A, *supra*.

1. Farm Animals

The word "animal" can be defined as including every living creature except human beings. <sup>1/</sup> The discussion in the following sections is restricted to farm animals, thus excluding wild animals and domestic animals generally thought of as pets.

The first six topics covered are: (a) the livestock sanitary board with an emphasis on disease control, and with one subsection devoted to brands, (b) animal trespass and strays, (c) fence law, (d) cruelty to animals, (e) statutory liens upon animals, and (f) rustling. The remaining three sections deal with less than typical farm animals that the legislature has elected to regulate individually. These three are fur-bearing animals, bees and poultry.

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<sup>1/</sup> Minn. Stat. Ann. § 346.20 (West 1972).

B. Personal Property Law

1. Farm Animals

a. Livestock Sanitation,

(1) Livestock Sanitary Board.

The state livestock sanitary board consists of five members appointed by the governor with the advice and consent of the senate. <sup>1/</sup> Three of the members are livestock producers from within Minnesota and the other two are practicing veterinarians. <sup>2/</sup> The dean of the University of Minnesota veterinary college serves as a non-voting consultant to the board. <sup>3/</sup> The board elects a president and vice-president; and also elects a veterinarian who is not a member to serve as secretary and executive officer. <sup>4/</sup> It may employ an attorney and such other assistants as may be necessary to the performance of its duties. <sup>5/</sup>

It is the duty of the board to protect the health of domestic animals within the state using such means and making such regulations as may be necessary. <sup>6/</sup> The board meets quarterly on the first Friday after the second Tuesday in January, April, July, and October, with officers being elected at the April meeting. <sup>7/</sup> By October 1 of even number years, the board reports its proceedings and recommendations to the governor, and this report is published

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<sup>1/</sup> Minn. Stat. Ann. § 35.02 (West).

<sup>2/</sup> Id.

<sup>3/</sup> Id.

<sup>4/</sup> Id.

<sup>5/</sup> Id.

<sup>6/</sup> Minn. Stat. Ann. § 35.03 (West). See Minn. Reg. LSB §§ 1-66.

<sup>7/</sup> Minn. Stat. Ann. § 35.03 (West).

<sup>8/</sup> Id.



by the state. <sup>8/</sup>

Local boards of health are required to assist the board in preventing and controlling disease among domestic animals. <sup>9/</sup>

(2) Quarantine, Killing of Diseased Animals.

Both the livestock sanitary board (hereinafter L.S.B.) and local boards of health may quarantine or kill domestic animals infected with a contagious disease. <sup>10/</sup> Animals exposed but not yet infected to contagious diseases may also be killed, but only under the authority of the L.S.B. <sup>11/</sup> Either the L.S.B. or local boards of health may regulate the arrival or departure of exposed or infected animals. <sup>12/</sup> The L.S.B. can prohibit importation into the state of domestic animals which it feels may injure the health of livestock in the state, <sup>13/</sup> and they have issued regulations to this end governing health certification and quarantine of domestic animals being imported into Minnesota. <sup>14/</sup>

Every person who knows or suspects that a contagious disease exists in a domestic animal is supposed to immediately notify the

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<sup>8/</sup> Id.

<sup>9/</sup> Minn. Stat. Ann. § 35.04 (West).

<sup>10/</sup> Minn. Stat. Ann. § 35.05 (West). See Minn. Reg. L.S.B. 60, 61. Contagious diseases include, among others, glanders, tuberculosis, paratuberculosis (Johne's disease), antinomycosis (lumpy jaw), infectious anemia (swamp fever), anthrax, scabies, hog cholera, necro bacillosis, swine erysipelas, epizootic lymphangitis, blackleg, foot and mouth disease, and Texas fever. See Minn. Reg. L.S.B. 10-34.

<sup>11/</sup> Minn. Stat. Ann. § 35.05 (West).

<sup>12/</sup> Id.

<sup>13/</sup> Id.

<sup>14/</sup> Minn. Reg. L.S.B. §§ 1-8. See Minn. Stat. Ann. § 35.063 et seq. (West).

local board of health. <sup>15/</sup> The local board must notify the L.S.B. in writing within 24 hours after it has been notified. <sup>16/</sup>

The L.S.B. or its agent may examine under oath all persons believed to have knowledge of disease among domestic animals; and it may take depositions and compel witnesses to attend and testify. <sup>17/</sup>

(3) Owner Indemnity.

If the L.S.B. orders the vaccination of any domestic animal because the premises are infected with anthrax, and the animal dies from the vaccination, the L.S.B. will pay the owner the cash value of the animal. <sup>18/</sup> In appraising the value of the animal, maximum limits are \$60 for a cow, \$125 for a horse, \$5 for a sheep, and \$10 for a hog unless the animal is purebred and the pedigree is proven by certificate in which case the maximum appraisal values are \$150 for a cow, \$150 for a horse, \$25 for a sheep, and \$25 for a hog. <sup>19/</sup>

When the L.S.B. decides to kill an animal affected with tuberculosis, paratuberculosis, glanders, or Bangs disease, it notifies the owner and orders transportation of the animal to an abattoir (slaughterhouse) for inspection. <sup>20/</sup> No animal infected with any of these diseases may be killed until it has been

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<sup>15/</sup> Minn. Stat. Ann. § 35.06 (West).

<sup>16/</sup> Id.

<sup>17/</sup> Id.

<sup>18/</sup> Minn. Stat. Ann. § 35.07 (West). Value is determined by three competent disinterested parties.

<sup>19/</sup> Minn. Stat. Ann. § 35.07 (West).

<sup>20/</sup> Minn. Stat. Ann. § 35.08 (West).

inspected by a vet appointed by the L.S.B. and he pronounces them to be diseased. <sup>21/</sup> The owner receives the value of the net salvage of the carcass. <sup>22/</sup>

Before an animal is taken from an owner, the board and the owner shall agree in writing as to the value of the animal. <sup>23/</sup> This appraisal cannot exceed \$125 for a horse unless it is purebred in which case the maximum appraisal value is \$225. <sup>24/</sup> The following statute provides that "in no case shall any payment be more than \$37.50 for grade females or more than \$75 for any registered purebred animal." <sup>25/</sup> It is not clear what animals this statement refers to. It is also not clear whether this section conflicts with the values previously set for horses or whether it applies to all animals except horses.

After the appraisal is certified by the L.S.B., a warrant is drawn on the state treasury for the amount due. <sup>26/</sup> In determining the amount due the owner of cattle or horses slaughtered because of the presence of the tuberculosis, paratuberculosis glanders, or Bangs disease, the value of the net salvage of the carcass is deducted from the appraised value of the living animal. <sup>27/</sup> The state pay the owner two-thirds of the remainder. <sup>28/</sup> When the animal disease eradication division of the United States

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<sup>21/</sup> Minn. Stat. Ann. § 35.09(1) (West).

<sup>22/</sup> Minn. Stat. Ann. § 35.08 (West).

<sup>23/</sup> Id. If they can't agree, a 3 member board is appointed.

<sup>24/</sup> Id. Note that the purebred horse is worth \$75 more here than if it dies from antrax vaccination.

<sup>25/</sup> Minn. Stat. Ann. § 35.09(1) (West).

<sup>26/</sup> Minn. Stat. Ann. § 35.08 (West).

<sup>27/</sup> Minn. Stat. Ann. § 35.09(1) (West).

<sup>28/</sup> Id.

department of agriculture compensates the owner of the animal, the amount so received is deducted from the amount payable by the state. 29/

If the L.S.B. does not follow appropriate procedures in evaluating diseased animals, the owner cannot be convicted of violating the law 30/ for refusal to ship the animals within the allotted time. 31/

When a veterinarian orders an animal killed, the owner is not entitled to indemnity in the following cases: 32/

- (1) The animal is a steer.
- (2) The animal has not been kept for one year; or since birth, within the state.
- (3) The animal was brought into the state contrary to law or regulation.
- (4) The animal was diseased at the time of its arrival in the state.
- (5) The animal belongs to the United States or to a state, county, or municipal institution.
- (6) The owner knew the animal was diseased when he gained possession or was negligent in exposing the animal to disease.
- (7) The owner previously received indemnity and then

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29/ Id.

30/ Pursuant to Minn. Stat. Ann. § 35.30, .70 (West).

31/ State v. Shake, 273 Minn. 181, 140 N.W.2d 341 (1966) (wife of owner signed appraisal slips in blank, thus no agreement as required).

32/ Minn. Stat. Ann. § 35.09(2) (West).

introduced into his herd an animal which had not passed tuberculin or Bangs disease tests.

- (8) The owner, agent, or person in possession of the animal has not complied with state board rules with respect to condemned animals.
- (9) The animal was not destroyed within 15 days and the owner did not receive an extension of time.
- (10) The remainder of the herd was not examined or tested by the state board.
- (11) The owner has not complied with instructions and regulations requiring cleaning and disinfecting within 15 days after the removal of the animal.
- (12) The owner has fed the diseased animal or milk products derived from creameries and such milk has not been pasteurized.
- (13) The owner is a nonresident and is not engaged in breeding animals within the state.

If the annual appropriation for payment of indemnities becomes exhausted, the state board must discontinue official tests unless the owner waives his right to indemnity. <sup>33/</sup>

The L.S.B. may condemn and appraise exposed cattle and cattle which do not react to the brucellosis test if it is determined that herd depopulation is essential to eradication of bovine brucellosis. The owner is paid the difference between the appraised

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<sup>33/</sup> Minn. Stat. Ann. § 35.09(2)(14) (West).

<sup>34/</sup> Minn. Stat. Ann. § 35.09(2a) (West).

value and salvage value up to \$300 (\$600 for registered purebred). <sup>35/</sup> Here again, indemnity is reduced by amounts paid by the U.S. department of agriculture and no indemnity is paid for steers. <sup>36/</sup>

If a contagious disease emergency is declared by the L.S.B. or the U.S. department of agriculture, the state board may do whatever is necessary, if reasonable, to eradicate the dangerous disease. <sup>37/</sup> All animals or property destroyed in such an emergency shall be appraised and paid for by the state if the L.S.B. declared the emergency or paid for one-half by the state and one-half by the federal government if the U.S. department of agriculture declared the emergency. <sup>38/</sup>

If there is a mortgage or lien against a condemned and killed animal, and the mortgagee or lienholder gives written notice to the board or officer whose duty it is to pay indemnity on the animal, then the lien attaches to the indemnity. <sup>39/</sup> Unless the lienholder and owner agree in writing how to distribute the proceeds, they will be paid into district court for distribution according to determinations made by that court. <sup>40/</sup>

(4) Expenses.

The cost of autopsies and appraisals is paid by the state,

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<sup>35/</sup> Id.

<sup>36/</sup> Id.

<sup>37/</sup> Minn. Stat. Ann. § 35.09(3) (West).

<sup>38/</sup> Id. Salvage value, if any, is deducted first.

<sup>39/</sup> Minn. Stat. Ann. § 35.10 (West).

<sup>40/</sup> Id.

except that in cases where the owner has protested, the charges of an expert appointed by the owner must be paid by him. <sup>41/</sup>

The cost of killing and burial of a diseased animal, when ordered by any board, is borne by the town or incorporated place where the animal is kept. <sup>42/</sup> The cost of quarantine, when possession is taken from the owner, is paid four-fifths by the state and one-fifth by the town or place. <sup>43/</sup> If the animal is quarantined by the owner, he must pay the expense. <sup>44/</sup> If the animal is quarantined while being shipped, the cost is borne by the owner or keeper. <sup>45/</sup> When the owner or keeper becomes liable the L.S.B. has a lien on the animal and can maintain an action for the amount. <sup>46/</sup>

(5) Entry Forbidden.

If contagious diseases become prevalent among domestic animals, any owner of such animals may post a notice forbidding all persons, except an agent of the L.S.B. or local board of health, from entering any building or enclosure where such animals are kept. <sup>47/</sup>

(6) Hog Cholera.

The L.S.B. may destroy any swine which the state veterinarian knows, or suspects, to be infected with hog cholera if the board

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<sup>41/</sup> Minn. Stat. Ann. § 35.11 (West).

<sup>42/</sup> Minn. Stat. Ann. § 35.12 (West).

<sup>43/</sup> Id.

<sup>44/</sup> Id.

<sup>45/</sup> Id.

<sup>46/</sup> Id.

<sup>47/</sup> Minn. Stat. Ann. § 35.13 (West).

finds such is necessary to reduce the danger of the spread of the disease. <sup>48/</sup> The board will appraise the swine and indemnify the owner up to \$40 per hog (\$50 for registered stock). <sup>49/</sup>

(7) Livestock Detectives.

Before any livestock detective can seize or hold any animal which he knows, or believes has strayed or has been stolen from the state where his commission was issued, he must pay \$5 to the secretary of state and file:

- (1) His commission or a certified copy thereof
- (2) A \$2000 bond
- (3) A stipulation that service on the secretary of state is service upon him in an action upon the bond.

(8) Transportation of Livestock.

It is unlawful to bring in by truck, or to drive or lead in any animal or poultry for work, feeding, breeding, dairy purposes, or sale or resale unless in compliance with the regulations of the L.S.B. <sup>51/</sup>

An inspector of the L.S.B. has the authority to stop any truck hauling livestock and inspect the health certificates or permits of the livestock being transported. <sup>52/</sup> The automobile of an inspector of the L.S.B. making such a stop must be equipped

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<sup>48/</sup> Minn. Stat. Ann. § 35.132 (West).

<sup>49/</sup> Minn. Stat. Ann. § 35.133 (West).

<sup>50/</sup> Minn. Stat. Ann. § 35.14 (West).

<sup>51/</sup> Minn. Stat. Ann. § 35.15 (West). See Minn. Reg. L.S.B. §§ 1-8.

<sup>52/</sup> Id.



as follows: 53/

- (1) With a lighted red signal mounted on right front fender with the word STOP printed on the face of the signal,
- (2) With a flashing amber light of the type used by the Minnesota Highway Patrol mounted on the inside rear deck, and
- (3) With the words "Livestock Sanitary Board" clearly printed on the right front door.

Any driver who fails or refuses to stop for this inspection is guilty of a misdemeanor. 54/

If the rules of the L.S.B. are not complied with, the company transporting the animals is required to notify the board and to hold the animals or poultry at the first place within Minnesota where there are suitable facilities for holding the animals. 55/ The L.S.B. will then inspect the animals at the expense of the owner. 56/

The L.S.B. is authorized to promulgate regulations for the cleaning and disinfecting of railroad cars and other vehicles used for the transportation of live animals and poultry. 57/

It must furnish railroads and persons operating public stockyards

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53/ Id.

54/ Id.

55/ Minn. Stat. Ann. § 35.16 (West).

56/ Id.

57/ Minn. Stat. Ann. § 35.81 (West). See Minn. Reg. L.S.B. 51, 52.

with copies of the regulations. <sup>58/</sup> The regulations require cleaning and disinfecting of a railroad car before it can be used again (or within 60 hours if not immediately reused) if the car contained animals or poultry infected or which were suspected of being infected. <sup>59/</sup> Other vehicles must be immediately disinfected. <sup>60/</sup>

(9) Tuberculin Testing.

The L.S.B. cannot discriminate among licensed veterinarians in distributing tuberculin or mallein for use in testing cattle and horses. <sup>61/</sup> Distribution cannot be affected by whether or not the veterinarian is a graduate of a veterinary college. <sup>62/</sup> The board must keep a record of all applications for tuberculin and mallein and make distribution in the order of application. <sup>63/</sup> If there is not enough of either tuberculin or mallein, it shall be distributed pro rata. <sup>64/</sup>

Every druggist in the state who sells any mallein or tuberculin must report to the state board, on the day of the sale, giving the name of the purchaser, the amount sold and the name and place of business of any person for whom it was purchased (if other than the purchaser). <sup>65/</sup> Any person using

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<sup>58/</sup> Id.  
<sup>59/</sup> Minn. Reg. L.S.B. 51.  
<sup>60/</sup> Minn. Reg. L.S.B. 52.  
<sup>61/</sup> Minn. Stat. Ann. § 35.17 (West).  
<sup>62/</sup> Id.  
<sup>63/</sup> Minn. Stat. Ann. § 35.18 (West).  
<sup>64/</sup> Id.  
<sup>65/</sup> Minn. Stat. Ann. § 35.33 (West).

tuberculin on cattle or mallein on horses which has been obtained from the L.S.B. or local board of health must take the temperature of the animal both before and after injection. <sup>66/</sup> All temperatures must be written on a blank furnished by the board along with the name, age, and a full description of the animal, the time each temperature was taken and the correct temperature at each reading, and this report must be provided to the board furnishing the tuberculin or mallein. <sup>67/</sup>

It is unlawful to exhibit cattle at a county fair, or at the state fair, unless it has been tested and found free of tuberculin. <sup>68/</sup> A certificate of testing as approved by the L.S.B. must be furnished before the cattle are permitted to enter exhibition grounds or buildings. <sup>69/</sup>

The boards of county commissioners of the different counties may, upon petition of a majority of cattle owners residing in the county, enter into an agreement with the state board for the testing of all cattle in the county and may appropriate 25¢ per head for each tuberculin test administered. <sup>70/</sup> If no funds are available for appropriation, a tax may be levied. <sup>71/</sup> The L.S.B. is, of course, empowered to enter into such an agreement with the counties. <sup>72/</sup> Subsequents retests to keep the county certified

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<sup>66/</sup> Minn. Stat. Ann. § 35.34 (West).

<sup>67/</sup> Minn. Stat. Ann. § 35.35 (West).

<sup>68/</sup> Minn. Stat. Ann. § 35.66 (West).

<sup>69/</sup> Id. See Minn. Reg. L.S.B. 40 for further regulations on exhibiting animals and poultry.

<sup>70/</sup> Minn. Stat. Ann. § 35.19 (West).

<sup>71/</sup> Id.

<sup>72/</sup> Minn. Stat. Ann. § 35.20 (West).

as a modified accredited area <sup>73/</sup> will be at the discretion and expense of the L.S.B. <sup>74/</sup>

When the percentage of tuberculous cattle within a county is reduced to meet the requirements of a modified accredited area, the L.S.B. will apply to the U.S. department of agriculture for certification of the county as a modified accredited area. <sup>75/</sup>

When a cooperative agreement <sup>76/</sup> has been made, the owners of cattle in the county must submit their cattle to tuberculin tests and must allow them to be slaughtered within 30 days if they react to the test. <sup>77/</sup>

(10) Sales, Brucellosis Testing, and Vaccination.

The L.S.B. has rule-making authority over any sale of cattle over six months of age (except steers, spayed heifers and beef calves where the age is eight months), and over the lease or loan of cattle for breeding purposes. <sup>78/</sup>

No person can sell or offer for sale, except for immediate slaughter or for consignment to a public stockyard under the supervision of the U.S. department of agriculture, cattle which have not been tested and found free of brucellosis; and the certificate of such test must be furnished or posted. <sup>79/</sup> The cattle may be sold without testing if they have been vaccinated

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<sup>73/</sup> As defined and approved by U.S. department of agriculture and the state board.

<sup>74/</sup> Minn. Stat. Ann. § 35.21 (West).

<sup>75/</sup> Minn. Stat. Ann. § 35.23 (West).

<sup>76/</sup> Between the bureau of animal husbandry of U.S. department of agriculture, state board and board of county commissioners. See Minn. Stat. Ann. § 35.22 (West).

<sup>77/</sup> Minn. Stat. Ann. § 35.24 (West).

<sup>78/</sup> Minn. Stat. Ann. § 35.245(1) (West). See Minn. Reg. L.S.B. §§ 40-44.

<sup>79/</sup> Minn. Stat. Ann. § 35.245(1) (West).

and a certificate of vaccination is furnished or posted. <sup>80/</sup>  
Female beef cattle under 18 months of age sold for feeding  
purposes are exempt from the requirements set out in this  
paragraph. <sup>81/</sup>

Brucellosis tests and vaccinations will be at a time and  
in a manner prescribed by the L.S.B., and a certificate of the  
test or vaccination must be furnished or posted by the seller  
at the time of sale. <sup>82/</sup>

Any person selling, leasing or loaning cattle without  
brucellosis tests or vaccination commits a misdemeanor. <sup>83/</sup>  
An auctioneer who sells cattle knowing that they have not had  
brucellosis tests or been vaccinated will forfeit his license  
upon conviction. <sup>84/</sup>

(11) Bangs Disease.

The L.S.B. is authorized to test cattle for bangs disease  
on the area plan (testing and periodic retesting of all cattle  
within a given area) and to condemn and slaughter all animals  
reacting to the test. <sup>85/</sup> An area may be a county or a township. <sup>86/</sup>

The L.S.B. can conduct a bangs disease test of all cattle  
within an area at no expense to the owners upon petition of 67%  
of the cattle owners residing in that area. <sup>87/</sup> The board will

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<sup>80/</sup> Id.  
<sup>81/</sup> Minn. Stat. Ann. § 35.245(3) (West).  
<sup>82/</sup> Minn. Stat. Ann. § 35.245(2) (West).  
<sup>83/</sup> Minn. Stat. Ann. § 35.245(5) (West).  
<sup>84/</sup> Id.  
<sup>85/</sup> Minn. Stat. Ann. § 35.25 (West).  
<sup>86/</sup> Id.  
<sup>87/</sup> Minn. Stat. Ann. § 35.25 (West).

hold a hearing to consider the petition and if it approves, it will publish the time and the place of testing. <sup>88/</sup> If 20% of the cattle owners in the area protest (within 30 days) that the original petitions were insufficient, a rehearing may be held. <sup>89/</sup> The board retains complete discretion as to the time of testing in an area and may commence when, in its opinion, sufficient veterinarians and funds for administration and indemnity payments are available. <sup>90/</sup>

Periodic retests will be made by the L.S.B. until the number of cattle infected with Bangs disease is reduced to meet the requirements of a modified accredited area (as defined by the board). <sup>91/</sup> After certification as a modified accredited area, subsequent retests are at the discretion of the board and of no expense to the county or area. <sup>92/</sup>

Once the time of testing is set, the owners of cattle, upon demand, must submit their animals for testing and must assist the board in restraining the cattle in order to make the tests. <sup>93/</sup> Reacting cattle must be immediately removed by the owner and submitted for slaughter within 15 days (in extraordinary circumstances, period may be extended an additional 15 days). <sup>94/</sup> Milk from reacting cattle cannot be sold unless it is pasteurized. <sup>95/</sup>

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<sup>88/</sup> Id.  
<sup>89/</sup> Minn. Stat. Ann. § 35.27 (West).  
<sup>90/</sup> Minn. Stat. Ann. § 35.28 (West).  
<sup>91/</sup> Minn. Stat. Ann. § 35.29 (West).  
<sup>92/</sup> Id.  
<sup>93/</sup> Minn. Stat. Ann. § 35.30 (West).  
<sup>94/</sup> Id.  
<sup>95/</sup> Id.

Boards of county commissioners are authorized to appropriate funds to help control Bangs disease. 96/

(12) Permits for Sale of Biological Products.

The L.S.B. has the authority to make regulations governing the manufacture, sale, and distribution of biological products containing the active virus of a communicable disease, when such product is to be used on domestic animals. 97/

No person can manufacture, sell or distribute biological products (e.g., brucella abortus, anthrax and modified live rabies vaccine, antigens) unless granted a permit by the L.S.B. 98/ Permit applications must give the applicant's name, his place of business and such other information as the state board may require. 99/ The application must be accompanied by evidence that the applicant is a holder of a valid United States government license for manufacture and sale of biological products. 100/

The application must also be accompanied by a \$5000 bond for the benefit of (1) persons using biological products sold by the permit holder who may be damaged by reason of the holder's negligence in warehousing, handling or distributing his products, and (2) for the benefit of the state to cover penalties against the permit holder in any action instituted by the state. 101/

Any party damaged by the negligence of any dealer in actions

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96/ Minn. Stat. Ann. § 35.32 (West).  
97/ Minn. Stat. Ann. § 35.40 (West). See Minn. Reg. L.S.B. 55.  
98/ Minn. Stat. Ann. § 35.41 (West).  
99/ Minn. Stat. Ann. § 35.42 (West).  
100/ Id.  
101/ Minn. Stat. Ann. § 35.43 (West).

relating to biological products may recover damages to the full amount suffered. 102/ If a judgment is obtained upon any bond, the L.S.B. may revoke the permit. 103/ A further bond will be required in order to provide the same security to persons entitled to such security as with the original bond and failure to furnish such a bond revokes the permit without further action by the board. 104/ Full recovery against the manufacturer is allowed if the injury resulted from negligence of the manufacturer. 105/

Before issuing a permit to a manufacturer or dealer, the state board may inspect the premises where it is proposed the biological products will be manufactured or sold. 106/ The board can make any requirements regarding the physical condition and sanitation of the premises as it deems necessary to insure the potency and purity of the products. 107/ The board may inspect the premises at any time to insure compliance with its rules and regulations. 108/

A \$25 fee must accompany each application for a manufacturer's permit for each plant where manufacturing is to take place and a \$15 fee must accompany each dealer's permit application for each warehouse or distributing agency. 109/ Permits are valid for one year. 110/

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102/ Minn. Stat. Ann. § 35.44 (West).  
103/ Id.  
104/ Id.  
105/ Minn. Stat. Ann. § 35.45 (West).  
106/ Minn. Stat. Ann. § 35.46 (West).  
107/ Id.  
108/ Id.  
109/ Minn. Stat. Ann. § 35.47 (West).  
110/ Id.



After a hearing, the L.S.B. may revoke any manufacturer's or dealer's permit for violations of the conditions under which it was issued. <sup>111/</sup> No biological product can be sold or distributed unless it is produced at a plant holding a United States government license for manufacture of biological products. <sup>112/</sup>

The sale or use of virulent blood or virulent live hog cholera virus is prohibited. <sup>113/</sup> So is the sale or use of modified live hog cholera virus for prevention of hog cholera. <sup>114/</sup> The state board may permit the sale of these products when it is necessary to protect the health of domestic animals or to qualify animals for export to other states or foreign countries. <sup>115/</sup> No person can administer living hog cholera virus unless he is granted a permit by the L.S.B. <sup>116/</sup> Such permits must be in writing and can only be issued to licensed veterinarians. <sup>117/</sup>

The L.S.B. may seize, at any time or place, for examination samples of biological products manufactured or kept for sale. <sup>118/</sup> It may condemn or destroy any biological products it deems unsafe. <sup>119/</sup>

No person may remove or deface any label upon bottles or packages containing any biological product, or change the contents

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<sup>111/</sup> Minn. Stat. Ann. § 35.48 (West).  
<sup>112/</sup> Minn. Stat. Ann. § 35.49 (West).  
<sup>113/</sup> Minn. Stat. Ann. § 35.50 (West).  
<sup>114/</sup> Id.  
<sup>115/</sup> Id.  
<sup>116/</sup> Minn. Stat. Ann. § 35.51 (West).  
<sup>117/</sup> Id.  
<sup>118/</sup> Minn. Stat. Ann. § 35.55 (West).  
<sup>119/</sup> Minn. Stat. Ann. § 35.56 (West).

of the original container except for immediate use. 120/  
Manufacturers and dealers who sell hog cholera serum must  
sell to all permit holders without discrimination as to price  
or otherwise. 121/

It is unlawful for a person licensed to manufacture, sell  
or distribute hog cholera serum or virus to assist, or be  
interested in, procuring applicants for permits. 122/  
Violations will result in license forfeiture. 123/

Once hogs are treated by a person authorized to administer  
treatment, they must be quarantined for 21 days. 124/

It appears from the statute involved that vaccine for  
Marek's disease can no longer be manufactured or distributed in  
Minnesota. The statute requires that an applicant for a permit  
to manufacture or distribute such a vaccine must have applied  
for, and received, prior to July 1, 1972, a veterinary biologics  
license from the Veterinary Biologics Division of the Agricultural  
Research Service, U.S. Department of Agriculture. 125/ Unless  
the permit was acquired before July 1, 1972, the batch of  
vaccine cannot be sold. 126/

(13) Animals for Public Service.

Any person who regularly leases or loans three or more bulls  
for public service must be licensed by the L.S.B. and must

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120/ Minn. Stat. Ann. § 35.57 (West).  
121/ Minn. Stat. Ann. § 35.58 (West).  
122/ Minn. Stat. Ann. § 35.60 (West).  
123/ Id.  
124/ Id.  
125/ Minn. Stat. Ann. § 35.605(4) (West).  
126/ Id.

register each animal offered for service with that board. <sup>127/</sup>  
There is a \$10 fee for the license, and a \$1 registration fee  
for each animal. <sup>128/</sup> The license is effective for one year  
while the registration of an animal is permanent. <sup>129/</sup> The  
registration certificate of the bull should be submitted to the  
L.S.B. for cancellation when the bull is withdrawn from public  
service. <sup>130/</sup>

Registration applications must be accompanied by a statement  
from a licensed veterinarian relating to the physical condition  
of the bull. <sup>131/</sup> The board will state on the registration  
certificate any fact relating to the physical condition of the  
bull which is material to the breeding qualities of the animal. <sup>132/</sup>  
The registration certificate must be prominently displayed at the  
location where the animal is offered for service. <sup>133/</sup> When  
ownership of such a "registered" bull is transferred, the  
registration may also be transferred upon payment of \$.50 to  
the L.S.B. <sup>134/</sup>

When an animal registered under this section is offered for  
service at a new location, it must be inspected by a licensed  
vet who must report to the L.S.B. <sup>135/</sup> Since the animal was  
relocated, it must be tested for brucellosis. <sup>136/</sup> No bull with

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<sup>127/</sup> Minn. Stat. Ann. § 35.695(1) (West).

<sup>128/</sup> Id.

<sup>129/</sup> Id.

<sup>130/</sup> Id.

<sup>131/</sup> Minn. Stat. Ann. § 35.695(2) (West).

<sup>132/</sup> Id.

<sup>133/</sup> Id.

<sup>134/</sup> Id.

<sup>135/</sup> Minn. Stat. Ann. § 35.695(3) (West).

<sup>136/</sup> Id.

brucellosis can be offered for public service and the L.S.B. may prohibit the offering of a bull for public service if the animal has an infectious or contagious disease. 137/

It is a misdemeanor to violate any of the provisions of this section of the law. 138/ After notice and hearing, the L.S.B. may revoke a license or registration certificate for failure to comply with the provision of the law relating to offering animals for public service. 139/

(14) Milk and Cream Testing.

The L.S.B. has the authority to enter any establishment 140/ to collect samples of the milk or cream delivered to such establishment. 141/ The establishment operator must submit any container of milk or cream delivered to it to an agent of the L.S.B., before any milk or cream is removed, to allow the agent to get a sample (not to exceed one ounce) for the purpose of administering tests to determine the existence of disease in any cattle which produced the milk or cream. 142/

The establishment operator must also provide the agent with the name and address of the person delivering each container of milk or cream and the name and address of the owner of the cattle

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137/ Minn. Stat. Ann. § 35.695(4) (West).

138/ Minn. Stat. Ann. § 35.695(5) (West).

139/ Id.

140/ Establishment means creamery, milk or cream collection station or any place of business where milk or cream is purchased or assembled for processing or sale. Minn. Stat. Ann. § 35.72(1) (West).

141/ Minn. Stat. Ann. § 35.72(2) (West).

142/ Minn. Stat. Ann. § 35.72(4) (West). See Minn. Reg. L.S.B. 58.

which produced the milk or cream. <sup>143/</sup> The agent must be diligent in avoiding contamination of the milk or cream while procuring his sample and he must attempt to avoid delay in the normal operation of the establishment. <sup>144/</sup>

Violation of the provision of this section of the law is a misdemeanor. <sup>145/</sup>

(15) Feeding Garbage to Animals.

No person can feed garbage to livestock or poultry without first securing a license from the L.S.B. and no person can transport garbage on public highways of the state for the purpose of feeding it to livestock or poultry unless he has secured a license. <sup>146/</sup> This does not apply to persons who feed their own animals or poultry garbage from their own household. <sup>147/</sup> Garbage is defined as vegetable or animal refuse matter and includes waste material or by-product of a kitchen, restaurant or slaughter house and refuse accumulation of animal, fruit, or vegetable matter (liquid or solid) but does not include vegetable matter or by-products resulting from the manufacture or processing of canned or frozen vegetables. <sup>148/</sup>

These licenses must be renewed before the 1st of July each year. <sup>149/</sup> Applications for obtaining or renewing a license are submitted to the L.S.B. <sup>150/</sup> The board may revoke or refuse

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<sup>143/</sup> Minn. Stat. Ann. § 35.72(3) (West). See Minn. Reg. L.S.B. 58.  
<sup>144/</sup> Minn. Stat. Ann. § 35.72(5) (West).  
<sup>145/</sup> Minn. Stat. Ann. § 35.72(6) (West).  
<sup>146/</sup> Minn. Stat. Ann. § 35.75 (West).  
<sup>147/</sup> Minn. Stat. Ann. § 35.74 (West).  
<sup>148/</sup> Minn. Stat. Ann. § 35.73(4) (West).  
<sup>149/</sup> Minn. Stat. Ann. § 35.75 (West).  
<sup>150/</sup> Id.

to issue a license for failure to comply with laws or L.S.B. regulations relating to feeding garbage to animals. <sup>151/</sup>

No garbage can be fed to livestock until it has been thoroughly heated to at least 212 degrees Fahrenheit for at least 30 minutes unless the garbage has been treated in some other manner approved in writing by the L.S.B. as equally effective for the protection of the public health. <sup>152/</sup> No person can knowingly permit any livestock or poultry owned by him or in his charge to have access to untreated garbage. <sup>153/</sup>

All premises on which garbage is fed to livestock or poultry are under quarantine and must be maintained in a sanitary condition. <sup>154/</sup> No livestock or poultry to which garbage has been fed can be removed from the premises except under a permit from the L.S.B. <sup>155/</sup>

Any authorized representative of the L.S.B. may enter upon property at any reasonable time for the purpose of inspecting conditions relating to the feeding of garbage to, or the treating of garbage to be fed to animals. <sup>156/</sup> He may inspect records relating to the feeding of garbage to animals. <sup>157/</sup> The board may require records be maintained relating to the treating of garbage to be fed to swine and that copies of the records be

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<sup>151/</sup> Id.  
<sup>152/</sup> Minn. Stat. Ann. § 35.76 (West).  
<sup>153/</sup> Id.  
<sup>154/</sup> Minn. Stat. Ann. § 35.77 (West).  
<sup>155/</sup> Id.  
<sup>156/</sup> Minn. Stat. Ann. § 35.78 (West).  
<sup>157/</sup> Id.

submitted to the board on request. 158/

Any person who violates the laws or regulations relating to the feeding of garbage to animals commits a misdemeanor and each day upon which a violation occurs constitutes a separate offense. 159/

(16) Rendering Plant Permits, Disposition of Carcasses.

No person can engage in the business of rendering animals, poultry or fish without obtaining a permit from the L.S.B. 160/ The L.S.B. may also issue permits to pet food establishments and mink ranchers for transporting carcasses of domestic animals over public highways for pet food or mink food. 161/

The owner or operator of a pet food processing plant or mink ranch must employ an official veterinarian. 162/ This veterinarian will examine carcasses to determine whether they are suitable for pet food or mink food. 163/ If the official vet determines that a carcass is not suitable, it must be disposed of by a rendering plant operating under permit from the state board. 164/

Every person having charge of a domestic animal that has died or been killed, otherwise than by being slaughtered for

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158/ Id.

159/ Minn. Stat. Ann. § 35.80 (West).

160/ Minn. Stat. Ann. § 35.82 (West). See Minn. Reg. L.S.B. 50, 53.

161/ Minn. Stat. Ann. § 35.82(1b) (West). Valid for one year.

162/ Id.

163/ Id.

164/ Id.

human or animal consumption, must bury the carcass at least 3 feet deep or burn it. <sup>165/</sup> The L.S.B. may, as an alternative, permit rendering plants to remove carcasses of domestic animals and fowl. <sup>166/</sup> This includes rendering plants in adjacent states with which a reciprocal agreement is in effect. <sup>167/</sup> Carcasses collected by rendering plants may be used as pet and mink food if the rendering plant employs an official veterinarian. <sup>168/</sup> The official vet must examine the carcass to determine whether it is fit for pet or mink food before it can be used as such. <sup>169/</sup>

The L.S.B. has the authority to enter private property to inspect the carcass of any domestic animal that has died. <sup>170/</sup> Failure to dispose of the carcass is a public nuisance and the state board may go to district court for a writ requiring abatement. <sup>171/</sup> A criminal prosecution may also be brought. <sup>172/</sup> No person can sell or transport on a public road a carcass not killed for human or animal consumption without a permit unless for a scientific or medical purpose and then only if enclosed in a leak proof container to prevent spillage or dripping of liquid waste. <sup>173/</sup>

No person may wilfully or negligently permit a diseased animal owned or controlled by him to escape his control or to run

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<sup>165/</sup> Minn. Stat. Ann. § 35.82(2) (West).

<sup>166/</sup>

<sup>167/</sup> Id.

<sup>168/</sup> Id.

<sup>169/</sup> Id.

<sup>170/</sup> Id.

<sup>171/</sup> Id.

<sup>172/</sup> Id.

<sup>173/</sup> Id. See Minn. Reg. L.S.B. 50.



at large. 174/

Any person who violates any provision of the law dealing with rendering plant permits and disposal of animal carcasses is guilty of a misdemeanor. 175/

The L.S.B. is authorized to enter into reciprocal agreements with adjacent states to provide that permits issued to rendering plants, pet food processing establishments, suppliers of either of these, and mink ranch operators may transport carcasses to their plants, establishments or ranches over the public highways of Minnesota and the reciprocating state. 176/

These sections of the law dealing with rendering plant permits and carcasses do not apply to animals which are commonly maintained in the home. 177/

(17) Brands.

The L.S.B. approves marks and brands and publishes a brandbook with a facsimile of every brand or mark registered with it. 178/ The book also contains the owner's name and address and pertinent laws and regulations. 179/ A mark means a permanent identification cut from the ear or ears of a live animal. 180/

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174/ Minn. Stat. Ann. § 35.02(2) (West).  
175/ Id.  
176/ Minn. Stat. Ann. § 35.82(3) (West).  
177/ Minn. Stat. Ann. § 35.82(4) (West).  
178/ Minn. Stat. Ann. § 35.822 (West).  
179/ Id.  
180/ Minn. Stat. Ann. § 35.821 (West).

A brand is a permanent identification mark of letters, numbers or figures at least four inches in length or diameter which is burned into the hide of a live animal with a hot iron; and it refers to both the mark burned and the location of this mark. <sup>181/</sup>  
In the case of sheep, a brand includes a painted mark which is renewed after each shearing. <sup>182/</sup>

The L.S.B. prepares standard forms and makes them available to persons who desire to apply for a brand. <sup>183/</sup> The application must show a left and right side view of the animal and designate one of the following body regions: head, bregma (front of the head), and right and left jaw, neck, shoulder, rib, hip and breech. <sup>184/</sup> The application should contain three distinct brands in order of preference and three locations in order of preference. <sup>185/</sup> It must be signed, notarized, and accompanied by a \$10 fee. <sup>186/</sup>

If approved by the board, the mark or brand is good for ten years. <sup>187/</sup> It is a felony to knowingly brand or mark an animal with a mark that has not been registered and which duplicates a mark or brand which has been registered (similar mark in any location). <sup>188/</sup> Altering or defacing a brand to prevent identification by its owner is also a felony. <sup>189/</sup>

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<sup>181/</sup> Id.  
<sup>182/</sup> Id.  
<sup>183/</sup> Minn. Stat. Ann. § 35.824 (West).  
<sup>184/</sup> Id.  
<sup>185/</sup> Id.  
<sup>186/</sup> Id.  
<sup>187/</sup> Id.  
<sup>188/</sup> Id.  
<sup>189/</sup> Id.

If a brand is found by the L.S.B. to be in conflict with a brand previously registered, the fee and the application are returned to the person making the application. <sup>190/</sup> If approved a brand is sorted in a systematic manner and published in the state brand book. <sup>191/</sup> Six months before termination, the brand owner (or assignee) will receive notification that the brand must be renewed. <sup>192/</sup> A reregistration fee of \$10 is charged. <sup>193/</sup> Failure to reregister is considered abandonment to the state of the brand but it may not be reissued except to the original owner for two years. <sup>194/</sup>

Brand books are sold to the public at cost. <sup>195/</sup> The sheriff of each county gets a free copy. <sup>196/</sup>

Brands or marks in the current edition of the brand book constitute prima facie evidence of ownership. <sup>197/</sup>

Brands appearing in the state brand book can be sold, assigned, devised or bequeathed the same as other personal property. <sup>198/</sup> The fee for recording a transferred brand is \$10. <sup>199/</sup>

Any person who sells a branded or marked animal, and the brand or mark is recorded in current brand book, must execute a

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<sup>190/</sup> Minn. Stat. Ann. § 35.825 (West).  
<sup>191/</sup> Minn. Stat. Ann. § 35.926 (West).  
<sup>192/</sup> Id.  
<sup>193/</sup> Id.  
<sup>194/</sup> Id.  
<sup>195/</sup> Minn. Stat. Ann. § 35.827 (West).  
<sup>196/</sup> Id.  
<sup>197/</sup> Minn. Stat. Ann. § 35.828 (West).  
<sup>198/</sup> Minn. Stat. Ann. § 35.829 (West).  
<sup>199/</sup> Id.

written bill of sale with (1) the signature and residence of the seller, (2) the name and address of the purchaser, (3) the total number of animals sold, (4) a description of each animal sold as to sex and kind, and (5) all registered brands. 200/ This bill of sale must be kept by the purchaser for two years or as long as he keeps any of the animals. 201/ A copy of the bill of sale shall be given the hauler of the animals (other than railroads) and must accompany the shipment of the animals. 202/ The bill of sale or a copy must be shown by the possessor on demand to any peace officer or inspector of the L.S.B. 203/ It is prima facie evidence of the sale of the animals described. 204/ Any violator of this section of the law relating to bills of sale commits a misdemeanor. 205/

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200/ Minn. Stat. Ann. § 35.830 (West).

201/ Id.

202/ Id.

203/ Id.

204/ Id.

205/ Id.

- b. Animal Trespass, Strays. As a general rule it is the legal duty of the owner of livestock to keep it off of the property of others. <sup>1/</sup> If the owner fails to use reasonable care in restraining his animals he may be held liable for damages caused by the animals to the property of others. If the owner fails to use reasonable care in restraining his animals he may be held liable for damages caused by the animals to the property of others. <sup>2/</sup>

It is obvious from reading the statutes discussed in this section that they were written some time ago. There is a reference to stray animals valued at less than \$5. <sup>3/</sup> and to a surplus after deducting expenses and costs from a \$5 forfeiture. <sup>4/</sup> But it is also evident from the Pigman case <sup>5/</sup> and elsewhere that the duties imposed and the liabilities created are still important.

As used in the first section following, a "stray" is a wandering animal and includes the situation where the owner is known. A separate section deals with animals doing damage to property. A third section deals with animals not being properly controlled by their owners. The final section briefly sets forth the misdemeanor charges which may result from animal trespass.

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<sup>1/</sup> See Gowan v. St. Paul, S. & T.F.R. Co., 25 Minn. 328 (1878).  
<sup>2/</sup> Hannah and Krausz, Law and Court Decision on Agriculture 250 (1st Ed. 1968).  
<sup>3/</sup> See Minn. Stat. Ann. § 346.02 (West). See also page  
<sup>4/</sup> See Minn. Stat. Ann. § 346.19 (West). See also page  
<sup>5/</sup> See footnote ~~54~~, infra.

(1) Strays.

No person can take up a stray, except horses or mules, unless that stray is found on land owned or occupied by him in the town wherein he resides. 6/

If a stray is found and the owner is known, the finder must notify the owner within 7 days and request the owner pay all reasonable charges. 7/ If the owner is unknown, the finder must notify the town clerk within 10 days. 8/ The town clerk informs the County Recorder who records it in an "estray book." 9/ If such an animal is worth less than \$5, the finder must give posted notice in the town; if over \$5 in value, he must give 4 weeks published notice. 10/ In either case, the notice must describe the stray, giving its natural and artificial marks as nearly as practicable, give the residence of the finder, and give the town, section and time when found. 11/ If the finder fails to give notice, he is liable to the owner for double the amount of damages sustained by the owner. 12/

Every finder of a stray worth \$10 or more must, within one month, have it appraised by the justice of the peace of the town and have a certificate of appraisement filed with the town clerk. 13/ The finder pays the justice \$.50 for this certificate plus \$.06 per

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6/ Minn. Stat. Ann. § 346.01 (West).  
7/ Minn. Stat. Ann. § 342.02 (West).  
8/ Id.  
9/ Id.  
10/ Id.  
11/ Id.  
12/ Id.  
13/ Minn. Stat. Ann. § 346.03 (West).

mile for necessary travel. <sup>14/</sup>

A person entitled to a stray can get it back at any time within one year after notice has been filed with the town clerk upon proving his right and paying all lawful charges. <sup>15/</sup> If the finder and the person entitled to the stray cannot agree on the amount of lawful charges or upon what should be allowed for the use of the stray, either may apply to a justice of the peace <sup>16/</sup> to settle the dispute. <sup>17/</sup> If any amount is due the finder over the value of the use of the stray, it becomes a lien on the animal. <sup>18/</sup>

If a stray is not claimed within one year, and its value is under \$10, the finder can keep it. <sup>19/</sup> If it is not claimed within one year and its value is \$10 or greater, it must be sold at public auction. <sup>20/</sup> The finder may bid at such auction, and if he buys he will deduct lawful charges and deposit the remainder

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<sup>14/</sup> Justices of the peace have been abolished in every municipality in which the county court holds regular sessions. Minn. Stat. Ann. § 487.35 (West). For purposes of that section of the law, municipality includes any township, part of which is within the boundaries of an affected municipality. Id. It would appear that the functions of the justice of the peace under discussion would be taken over by the county courts in affected municipalities. Cf. Minn. Stat. Ann. §§ 487.36, .37 (West).

<sup>15/</sup> Minn. Stat. Ann. § 346.04 (West).

<sup>16/</sup> See footnote 9, *supra*.

<sup>17/</sup> Minn. Stat. Ann. § 346.04 (West).

<sup>18/</sup> Id.

<sup>19/</sup> Minn. Stat. Ann. § 346.05 (West).

<sup>20/</sup> Id.

with the county treasurer. <sup>21/</sup> If the money so deposited is not claimed within one year, it goes into the public school fund. <sup>22/</sup>

If any person takes a stray without paying lawful charges, he is liable to the finder for the value of the stray. <sup>23/</sup>

If any person takes a stray in a manner not in compliance with the law relating to the taking of strays, he does not and cannot acquire any property right in such stray and is not entitled to any charges or compensation in relation to such stray. <sup>24/</sup>

(2) Animals Doing Damage.

The owner or occupant of land may seize and hold (distrain) any animal doing damage to his property and keep such animal until damages have been appraised. <sup>25/</sup> The landowner or occupant may distrain the damaging beast while it is upon the premises or upon immediate pursuit up until it returns to the enclosure or immediate care of the owner or keeper. <sup>26/</sup>

If the owner of the animal is known, the person distraining the animal must give the owner notice within 24 hours if the owner resides in the same town or within 48 hours if the owner resides in another town in the same county. <sup>27/</sup> The notice must specify the time when and the place where the animal was distrained, the number of beasts, the place of their detention, and that at

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<sup>21/</sup> Id.

<sup>22/</sup> Minn. Stat. Ann. § 346.06 (West).

<sup>23/</sup> Minn. Stat. Ann. § 346.07 (West).

<sup>24/</sup> Id.

<sup>25/</sup> Minn. Stat. Ann. § 346.08 (West).

<sup>26/</sup> Id.

<sup>27/</sup> Minn. Stat. Ann. § 346.09 (West) (Sundays excepted).



a time and place designated (not less than 12 hours after service of notice nor more than 3 days after the animal was originally distrained) he will apply to a justice of the peace <sup>28/</sup> for appointment of appraisers to appraise the damages. <sup>29/</sup>

If the owner is unknown or does not reside within the county, the person holding the animal shall apply for appraisers without notice and within 24 hours after distraining the animal. <sup>30/</sup>

Upon application for appraisers, the justice shall appoint three disinterested freeholders of the town where the damage was done to appraise the damage--for which the justice shall receive \$.50. <sup>31/</sup>

If the person holding the animal fails to apply for appointment of appraisers within the times stated above, the owner of the animals may so apply. <sup>32/</sup>

The notice required by this section of the law is written notice and it is not waived by a general statement of the owner "to have the damages appraised and he would pay for them." <sup>33/</sup> "To have the damages appraised" means to have them appraised according to the law. <sup>34/</sup> The object of the notice is to give the owner opportunity to be present and heard on the appointment of appraisers and to be present and heard before the appraisers

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<sup>28/</sup> See footnote 9, supra.

<sup>29/</sup> Minn. Stat. Ann. § 346.09 (West).

<sup>30/</sup> Id.

<sup>31/</sup> Id.

<sup>32/</sup> Id.

<sup>33/</sup> Pruke v. Maroushek, 182 Minn. 421, 234 N.W. 641 (1931).

<sup>34/</sup> Id.

on the question of damages. <sup>35/</sup>

The appointed appraisers view the damage, take the evidence of any witnesses, and then certify the amount of damage and the cost of keeping the beast (which shall not exceed \$1 per day). <sup>36/</sup> Their determinations are conclusive. <sup>37/</sup>

At any time before proceedings for appraisement are begun, or before an action for damages is brought, the owner of the animal may offer to pay the amount of damage the owner believes was sustained. <sup>38/</sup> If this tender is accepted, no further damages will be recovered. <sup>39/</sup> If it is refused, and the person whose property was damaged fails to show that the damage he suffered was greater than what was tendered, then the property owner must pay the costs and disbursements of the animal owner and cannot recover any costs, disbursements or expenses. <sup>40/</sup>

Unless the damage sustained and the fees of the appraisers and justice are paid within 24 hours after appraisal, the person distraining the animal must put it in the nearest pound or some secure enclosure in the same town. <sup>41/</sup> It will remain there until sold or until costs are paid. <sup>42/</sup> The animal must be furnished

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<sup>35/</sup> Id.  
<sup>36/</sup> Minn. Stat. Ann. § 346.10 (West).  
<sup>37/</sup> Id.  
<sup>38/</sup> Minn. Stat. Ann. § 346.11 (West).  
<sup>39/</sup> Id.  
<sup>40/</sup> Id.  
<sup>41/</sup> Minn. Stat. Ann. § 346.12 (West).  
<sup>42/</sup> Id.

food, the expense of which is added to costs. <sup>43/</sup> If the animal is impounded, the poundmaster <sup>44/</sup> will keep and receive the animal, and unless discharged according to law within six days, he will sell the critter at public auction to pay the damages, fees, and costs. <sup>45/</sup> If there is no pound within the town, the animal is kept in an enclosure and sold by the sheriff. <sup>46/</sup> The purchaser of a distrained animal sold by either the poundmaster or the sheriff must keep the critter for at least two months during which time the owner may redeem the animal by paying all costs and charges, and the amount paid therefore at the sale, plus an interest rate of 12%. <sup>47/</sup>

The proceeds of such a sale will be distributed according to the following priorities: <sup>48/</sup>

- (1) To the person making the sale for his fees which shall be the same as is allowed constables at execution sales;
- (2) To cover the costs of keeping the beast;
- (3) To pay the distrainer for certified damages, with fees for appraisers and the justice; and
- (4) The surplus to the owner of the beast, if known.

If no one claims the surplus within one week, it goes to the town treasurer where it will be paid to the owner at any time

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<sup>43/</sup> Id.

<sup>44/</sup> If a town elects to have an animal pound, a poundmaster is in charge of it. Minn. Stat. Ann. § 365.13 (West).

<sup>45/</sup> Minn. Stat. Ann. § 346.13 (West).

<sup>46/</sup> Minn. Stat. Ann. § 346.14 (West).

<sup>47/</sup> Minn. Stat. Ann. § 346.15 (West).

<sup>48/</sup> Minn. Stat. Ann. § 346.17 (West).

up to one year after the animal was restrained. <sup>49/</sup> If not claimed within one year, the money belongs to the town. <sup>50/</sup>

It is a misdemeanor to take a distrained beast without consent of the poundmaster or sheriff and without first paying damages and costs unless one has authority of law. <sup>51/</sup>

Any person may, and every peace officer shall, seize and confine cattle, horses, mules, sheep, swine, or domestic fowl running at large or trespassing upon the lands of another or upon public property. <sup>52/</sup> After such impoundment, the persons involved proceeds as provided above according to the general laws of the state relating to impoundment of animals. <sup>53/</sup>

The owner of land in a city may seize and confine a domestic animal <sup>54/</sup> which is doing damage to his land. <sup>55/</sup> Disposition of the animal and determination and payment of the damage caused by the animal are governed by the general laws of this state, as discussed above, relating to distraining of an animal by the owner or occupant of lands. <sup>56/</sup> If the owner or occupant of land does not seize and control the animal or fowl doing damage, then any person who knowingly permits the animal to run at large or trespass within any city is liable to the person aggrieved for treble the damage sustained by him. <sup>57/</sup>

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<sup>49/</sup> Id.

<sup>50/</sup> Id.

<sup>51/</sup> Minn. Stat. Ann. § 346.18 (West).

<sup>52/</sup> Minn. Stat. Ann. § 561.07 (West).

<sup>53/</sup> Id.

<sup>54/</sup> Cattle, horses, mules, sheep, swine or domestic fowl.

<sup>55/</sup> Minn. Stat. Ann. § 561.08 (West).

<sup>56/</sup> Id.

<sup>57/</sup> Minn. Stat. Ann. § 561.09 (West). See footnote 52, *infra*.

(3) Animals at Large.

It is unlawful to permit animals to run at large. <sup>58/</sup>  
The herding of cattle, horses, asses, mule, sheep, swine or  
goats upon land against the will of the owner of such land is  
considered to be a running at large. <sup>59/</sup> Any person who knowingly  
permits any domestic animal to run at large is liable to the  
person aggrieved for treble (3 times) damages. <sup>60/</sup> Although  
this last sentence does not specifically restrict liability to  
the owner of the animal, this was probably the legislative intent  
and there appear to be no cases holding a non-owner liable under  
this section. <sup>61/</sup>

Running at large within this section of the law means  
permitting an animal to stroll, wander, rove or ramble at will  
without restraint or confinement. <sup>62/</sup> A violation of this  
section is conclusive evidence of negligence unless it is  
excusable or justifiable under the circumstances of the case. <sup>63/</sup>  
If the violation is the proximate cause of injury to another,  
then the person who violates the statute is liable for the  
resulting damage. <sup>64/</sup> Thus if a person allows his horse to run  
loose on the highway, and a motorist runs into the horse, the

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<sup>58/</sup> Minn. Stat. Ann. § 346.16 (West).

<sup>59/</sup> Id.

<sup>60/</sup> Id.

<sup>61/</sup> The same applies for Minn. Stat. Ann. § 561.09 (West). See  
note 48, supra. Since this statute in effect creates a statutory  
tort, the duty created would rest with the owner or controller  
of the animal.

<sup>62/</sup> Serr v. Biwabik Concrete Aggregate Co., 202 Minn. 165, 278 N.W.  
355 (1938).

<sup>63/</sup> Pigman v. Nott, Minn. , 233 N.W.2d 287 (1975).

<sup>64/</sup> Id.

owner of the horse is liable to the motorist for three times the amount of damage suffered. <sup>65/</sup> The burden of proving a justification for violating this section of the law is on the person violating it. <sup>66/</sup>

Castrating of escaped bulls instead of pursuing treble damages will result in the landowner being liable to the owner of the animals regardless of whether the bulls were running at large or not. <sup>67/</sup>

A farmer may be liable for criminal proceedings for the negligent trespass <sup>68/</sup> of an animal in addition to civil damages under this section if his land is inadequately fenced. <sup>69/</sup>

The owner of any stallion over 1 year of age, bull over 9 months of age, boar or ram over 3 months of age, or of breach <sup>70/</sup> cattle who allows such animal to run at large forfeits \$5 per day for every such animal to the town where the animal is running. <sup>71/</sup> "Run at large" means any animal not picketed, confined in a corral or otherwise restricted by a legal fence. <sup>72/</sup> The chairman of the town board should notify the owner that the animal is at large and if it is not immediately confined, should bring suit to recover the \$5 and have the animal

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<sup>65/</sup> Id.

<sup>66/</sup> Id.

<sup>67/</sup> Mitzel v. Zachman, 219 Minn. 253, 16 N.W.2d 472 (1945).

<sup>68/</sup> See Minn. Stat. Ann. § 609.605 (West).

<sup>69/</sup> Op. Atty. Gen., 288d, May 23, 1961.

<sup>70/</sup> Apt to break fences or be wild. Webster's Third New International Dictionary (1965).

<sup>71/</sup> Minn. Stat. Ann. § 346.19 (West).

<sup>72/</sup> Id. For definition of legal fence, see Minn. Stat. Ann. § 344.02 (West).

sold under execution. <sup>73/</sup> After first deducting the costs and expenses of suit, the forfeitures collected are paid into the town treasury for use of the road and bridge fund. <sup>74/</sup>

If the owner of the critter is unknown, the town chairman shall have it confined for three days, then sold at public auction. <sup>75/</sup> The proceeds go to pay the forfeiture and expenses, with the remainder being held by the town treasurer for 1 year during which time it may be claimed by the owner. <sup>76/</sup> If not claimed, it goes to the town treasury. <sup>77/</sup>

If the owner is notified, and he permits the animal to continue or again run at large, the town chairman shall have the animal taken and castrated in the usual manner. <sup>78/</sup> There is then a lien upon the animal for the expenses incurred and this may be recovered from the owner in a civil action. <sup>79/</sup> Any 3 months old ram may be castrated without liability by any person among whose sheep it is found. <sup>80/</sup>

As noted in the discussion of rendering plant permits, supra at , it is illegal to allow a diseased animal to run at large.

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<sup>73/</sup> Id.

<sup>74/</sup> Id.

<sup>75/</sup> Id.

<sup>76/</sup> Id.

<sup>77/</sup> Id.

<sup>78/</sup> Minn. Stat. Ann. § 346.19(5) (West).

<sup>79/</sup> Id.

<sup>80/</sup> Id.

(4) Criminal Acts.

Whoever intentionally commits any of the following acts is guilty of a misdemeanor: 81/

- (1) Trespasses or permits animals under his control to go upon a railroad track.
- (2) Permits domestic animals or fowl under his control to go upon the land of another within a city.
- (3) Takes any animal upon a public conveyance without the consent of the operator.

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81/ Minn. Stat. Ann. § 609.605 (West).



c. Fences.

A fence can be described in general terms as a barrier which prevents escape from or intrusion into the fenced property. <sup>1/</sup> The fence structure can be of posts and boards, wire, pickets, rails or any of a number of other such items. This section discusses the duties and liabilities involved in building and maintaining fences.

Chapter 344<sup>2/</sup> of the Minnesota Code deals with partition fences as does the first subsection of this section. A separate subsection discusses the definition of a legal fence. The third and final subsection discusses the obligations of railroads to fence their right of way.

(1) Partition Fences.

When an owner of improved or used land desires that that land be fenced, the fence will be built and maintained as a partition fence. <sup>3/</sup> This means that the adjoining landowners will build and maintain the fence in equal shares. <sup>4/</sup> The effect of this law is that if either of two adjoining landowners want a fence built between their property, the fence will be built and the expenses of the fence will be shared equally. This is contrary to the "open range" law in some western states,

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<sup>1/</sup> See Webster's Third International Dictionary (1965).

<sup>2/</sup> It should be noted that occasionally a statute regulating fences will be passed that affects only a limited geographic area of the state. One example of this is a recent enactment which authorized permits for the construction of agricultural permits for the construction of agricultural fences along trunk highway right-of-ways in the town of Zumbrota. Act of March 28, 1978, ch. 656, 1978 Minn. Sess. Law Serv. (West).

<sup>3/</sup> Minn. Stat. Ann. § 344.03 (West).

<sup>4/</sup> Id.

but is consistent with the law in most states where the land is more commonly used for growing crops than for raising livestock. <sup>5/</sup>

Whether land is "improved" within the meaning of this statute is a question of fact; but using it as a pasture is "improved." <sup>6/</sup>

If one party fails to build or maintain a fence, the aggrieved party may complain to the fence viewers. <sup>7/</sup> Fence viewers are local officials who administer fence laws. <sup>8/</sup>

If the viewers determine that the existing fence is insufficient or a new fence is necessary, they shall notify the delinquent owner to that effect in writing and direct him to build, repair or rebuild the fence within a time they consider reasonable. <sup>9/</sup> If the delinquent owner fails to comply with these directions, the complainant may build the fence at his own expense and the delinquent party will be required to reimburse him for a portion of the expense. <sup>10/</sup>

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<sup>5/</sup> See Hannah and Krausz, Law and Court Decisions on Agriculture 360 (1st Ed. 1968).

<sup>6/</sup> Brom v. Kalmer, Minn. , 230 N.W.2d 69 (1975).

<sup>7/</sup> Minn. Stat. Ann. § 344.04 (West).

<sup>8/</sup> Webster's Third International Dictionary (1965). In Minnesota, town supervisors, city aldermen, or the commissioner of public works in cities with a commission form of government, and statutory city trustees are fence viewers. Minn. Stat. Ann. § 344.01 (West). In counties not organized into towns, the county commissioners are fence viewers but they don't receive per diem provided other viewers by Minn. Stat. Ann. § 344.18 (West). Minn. Stat. Ann. § 344.19 (West). If the line is between two towns there will be a viewer from each town. Minn. Stat. Ann. § 344.14 (West). Any viewer who unreasonably neglects his duty forfeits \$5 to the town and is liable to the person injured. Minn. Stat. Ann. § 344.17 (West).

<sup>9/</sup> Minn. Stat. Ann. § 344.04 (West).

<sup>10/</sup> Id. See also Minn. Stat. Ann. § 344.05 (West).

If adjoining land owners disagree as to the kind of fence, this matter can also be referred to the fence viewers who will then determine the kind and order it to be built. <sup>11/</sup> If one landowner is enclosed on 3 sides with a woven wire fence, then, each landowner shall erect a fence of like character and quality along the division line for one-half the length and he shall maintain the half he has built. <sup>12/</sup> The wording of this statute does not limit the obligation of the adjoining landowner to share expenses of construction only if it is a woven wire fence. <sup>13/</sup> A landowner building an enclosure after the adjoining landowner has erected a division fence is not removed of his obligation to contribute to the partition fence. <sup>14/</sup>

If a controversy arises over the right of the respective occupants in a partition fence, or their obligation to maintain it, either party may apply to the fence viewers who, after notice to the parties, may assign each his share of the fence and direct a time within which it must be erected or repaired. <sup>15/</sup> This assignment may be filed with the county recorder and is thereafter binding on succeeding occupants of the land. <sup>16/</sup> If either party fails to erect or maintain the part of the fence assigned to him, the other party may erect or maintain it and will be entitled to

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<sup>11/</sup> Minn. Stat. Ann. § 344.02 (West).

<sup>12/</sup> Id.

<sup>13/</sup> Op. Atty. Gen., 631-F, Sept. 27, 1940.

<sup>14/</sup> Boenig v. Hornberg, 24 Minn. 307 (1877).

<sup>15/</sup> Minn. Stat. Ann. § 344.06 (West).

<sup>16/</sup> Id.

twice the value thereof. 17/

A division of fences by fence viewers is valid against the parties and against their heirs and assigns. 18/ The same is true of a division by the adjoining owners if it is in writing, witnessed by two witnesses, signed and acknowledged and filed with the county recorder. 19/ An oral contract as to the division of a fence acted upon by the parties is binding upon them, but not on grantees or lessees who have not acted upon it. 20/

When, in a controversy between adjoining owners, it appears to the fence viewers that one occupant voluntarily erected or otherwise became proprietor of more than his just share before a complaint was made, the other occupant shall pay for as much of the fence as is assigned to him to repair and maintain. 21/

Where land is divided by a stream which is not a satisfactory fence and it is impractical to partition on the true boundary line, the viewers may decide on which side of the stream to erect the fence (or partly on each side). 22/

When property which was owned in common is now owned in severalty and one of the occupants wants a fence along the dividing line, it may be divided and assigned by fence viewers under these provisions of law. 23/

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17/ Minn. Stat. Ann. § 344.07 (West).

18/ Minn. Stat. Ann. § 344.08 (West).

19/ Id.

20/ Teubert v. Sons, 116 Minn. 195, 133 N.W. 467 (1911).

21/ Minn. Stat. Ann. § 344.09 (West).

22/ Minn. Stat. Ann. § 344.10 (West).

23/ Minn. Stat. Ann. § 344.11 (West).

Upon division and assignment, viewers may set a reasonable time, taking into consideration the season of the year, for building a fence. <sup>24/</sup> If one party fails to build within the time assigned the other party may build the entire fence and recover double the expenses incurred, plus the fees of the fence viewers. <sup>25/</sup>

When unenclosed land is initially enclosed the owner must pay one-half the value of each partition fence extending upon the line between his land and the land of another. <sup>26/</sup> If the parties do not agree, the value is determined by fence viewers. <sup>27/</sup> If the payment is not made within 60 days after the value is ascertained and demand made, it may be recovered along with the cost of ascertaining the value in a civil action. <sup>28/</sup>

(2) Legal Fence.

The following are considered to be legal and sufficient fences: <sup>29/</sup>

- (1) 32" woven wire with 2 barbed wires firmly fastened to well-set posts not more than one rod apart, the first barbed wire being above and not more than 4 inches from the woven wire and the second wire being above and not more than eight inches from the first wire.

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<sup>24/</sup> Minn. Stat. Ann. § 344.12 (West).  
<sup>25/</sup> Id.  
<sup>26/</sup> Minn. Stat. Ann. § 344.13 (West).  
<sup>27/</sup> Id.  
<sup>28/</sup> Id.  
<sup>29/</sup> Minn. Stat. Ann. § 344.02 (West).

- (2) 40" woven wire and one barbed wire firmly fastened to well-set posts not more than one rod apart, the barbed wire being above and not more than 4 inches from the woven wire.
- (3) 48" woven wire and one barbed wire not more than 4 inches above the woven wire firmly fastened to well-set posts not more than one rod apart.
- (4) 4 barbed wires with at least 40 barbs to the rod, the wires firmly fastened to posts not more than one rod apart, the top wire not more than 48 inches high and the bottom wire not less than 12 nor more than 16 inches from the ground.
- (5) All fences consisting of rails, timbers, wires, boards, stone walls or combinations of these or stream, lakes, ditches or hedges considered by fence viewers to be the equivalent of fences described in (1) through (4).

(3) Railroad Fences.

Railroads are required to build and maintain good and substantial fences on each side of all their lines and to put up cattle guards at all roads and street crossings except where necessary business requires that it be left open. <sup>30/</sup> If land is enclosed on other sides by woven wire the railroad must build

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<sup>30/</sup> Minn. Stat. Ann. § 219.31 (West).

a fence of like kind. <sup>31/</sup> Railroads are held to the exercise of ordinary diligence in building and maintaining these fences. <sup>32/</sup> The purpose behind requiring railroads to fence is to enclose the railroads so that cattle don't get on them. <sup>33/</sup>

Failure of a railroad to build the required fences results in liability for all damage which result including all domestic animals killed. <sup>34/</sup> If the railroad does not pay within 30 days the costs are doubled unless the railroad has tendered an amount in excess of the amount recovered. <sup>35/</sup> One case has held that there is no recovery against a railroad for an animal injured on an adjoining right of way even though access to the adjoining right of way was permitted because the railroad had a defective fence--the animal must be killed on the right of way of the company sued. <sup>36/</sup>

The owner of land abutting a railroad may serve notice on the company through any of its station agents between April 1 and October 1 of any year requiring the construction of a fence between his land and the railroad right of way. <sup>37/</sup> If the railroad does not construct the fence within 40 days after notice the landowner may recover twice the cost of constructing the fence, plus costs and an attorney's fee, whether or not he has

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<sup>31/</sup> Id.

<sup>32/</sup> Id.

<sup>33/</sup> Smith v. Minneapolis & St. Louis Railway Co., 37 Minn. 103, 33 N.W. 316 (1887).

<sup>34/</sup> Minn. Stat. Ann. § 219.32 (West).

<sup>35/</sup> Id.

<sup>36/</sup> Bear v. Chicago Great Western Railway Co., 141 F. 25 (8th Cir. 1905).

<sup>37/</sup> Minn. Stat. Ann. § 219.33 (West).

constructed the fence. <sup>38/</sup> Failure to serve notice does not relieve the railroad company from liability for damages. <sup>39/</sup>

A person owning land abutting a railroad may construct at his own expense an crossing (over, under or across) or drains as long as he does not impair the use of the railroad. <sup>40/</sup> The landowner must notify the nearest station agent in advance and the railroad may then construct the crossing with the landowner paying reasonable costs of construction. <sup>41/</sup>

When the railroad constructs a fence with a gate for the exclusive use of a landowner, and the railroad provides the landowner with a key, the railroad is not liable when the gate is left open through no fault of its own. <sup>42/</sup>

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<sup>38/</sup> Id.

<sup>39/</sup> Id.

<sup>40/</sup> Minn. Stat. Ann. § 219.35 (West).

<sup>41/</sup> Id.

<sup>42/</sup> Minn. Stat. Ann. § 219.36 (West).



d. Cruelty to Animals.

"Animal" is any living creature except humans and "cruelty" is every act or omission which permits unnecessary pain or suffering or death. <sup>1/</sup> This section discusses Minnesota law relating to domestic animals excluding those customarily thought of as house pets.

The first subsection describes certain actions which constitute cruelty and the second subsection deals with complaints of cruelty of the type described in subsection one. Subsection three discusses illegal actions associated with transporting animals. Subsection four discusses docking a horse's tail and five discusses exposing an animal to the elements. Administering poison to animals is discussed in subsection six. Subsection seven briefly retouches on failure to control a diseased animal. Subsections eight and nine discuss birds and chicks, and ten discusses animal fighting. The final subsection briefly describes and discusses societies for the prevention of cruelty to animals.

(1) Actions Constituting Cruelty.

No person may:

- (a) Overdrive, overload, torture, cruelly beat, neglect, or unjustifiably injure, maim, mutilate or kill any animal; nor can they cruelly work an animal when it is unfit for labor. These proscriptions apply whether the animal belongs to one or is owned by someone else.

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<sup>1/</sup> Minn. Stat. Ann. § 346.20 (West 1972).

<sup>2/</sup> Minn. Stat. Ann. § 346.21 (West 1972).

- (b) Deprive an animal of which he has charge or control of necessary food, water or shelter.
- (c) Keep a cow or other animal in any enclosure without wholesome exercise or change of air.
- (d) Feed a cow food which produces impure or unwholesome milk. 3/
- (e) Abandon any animal.
- (f) Allow a maimed, sick or disabled animal to lie in the street, road or other public place for more than three hours after notice.
- (g) Willfully instigate or further any act of cruelty to animals.
- (h) Cage any animal for public display unless the cage is constructed of solid materials on three sides to protect the animal from the elements and the cage is 4 times as long as the caged animal. 4/

Any person who violates any of these proscriptions commits a misdemeanor. 5/ For example, when an owner of horses discharges an employee in charge of feeding and caring for the horses, does not provide an adequate amount of feed, and

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3/ Unwholesome or impure milk includes milk obtained from animals in a diseased condition, or fed distillery waste (swill) or any substance in a state of putrefaction or fermentation. Minn. Stat. Ann. § 346.20 (West 1972).

4/ This prohibition does not apply to the Minnesota state fair or to county fairs nor to other state or political subdivision livestock and poultry exhibits. Minn. Stat. Ann. § 346.21(8) (West Supp. 1977). Nor does it apply to captive wildlife, which is regulated by Minn. Stat. § 97.611. Id.

5/ Minn. Stat. Ann. § 346.21(9) (West 1972).

even after notification fails to visit the premises to investigate the condition of the horses and as a consequence, the horses starve to death, this is sufficient evidence to convict the man of depriving an animal of necessary food, water or shelter. 6/

(2) Investigation of Cruelty Complaints.

Any person who has reason to believe that a violation of (a) through (h) described in (1) above is taking place may apply to court for a warrant for investigation. 7/ The court will examine under oath any witness and take his affidavit in writing. 8/ If the court finds that the affidavits gathered set forth facts tending to establish grounds for believing that a violation has occurred or is occurring, or probable cause to believe that such is the case, it may issue a search warrant to a peace officer within the county of the alleged infraction and order an investigation. 9/ The peace officer will take a vet with him to help conduct the investigation. Under the authority of the warrant, the peace officer can retain custody of anything specified in the warrant, including animals. 10/

The warrant must contain the names and addresses of persons

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6/ State v. Klammer, 230 Minn. 272, 41 N.W.2d 451 (1950).  
7/ Minn. Stat. Ann. § 346.215(1) (West Supp. 1977).  
8/ Id.  
9/ Id.  
10/ Id.

presenting affidavits in support of its application and must state the grounds for its issuance. <sup>11/</sup> It must be executed and returned within ten days or else it is void. <sup>12/</sup> The executing officer must return the warrant to the issuing court along with an inventory of the property taken, and this must be verified by signature. <sup>13/</sup>

The vet may order that any animal must be immediately disposed of if the animal is suffering and is beyond cure through reasonable care and treatment. <sup>14/</sup>

If a person is found guilty of violating the law as described in (1) above, he will be assessed with the expense of the investigation, including the vet's fee, of disposing of or keeping any animal, and with other reasonable expenses. <sup>15/</sup> If he is found innocent, these expenses will be paid by the county treasurer out of general funds. <sup>16/</sup>

(3) Transporting Animals.

It is a misdemeanor to: <sup>17/</sup>

- (a) Carry a live animal without providing suitable racks, cars, crates or cages in which the animal can either stand or lie down during transportation and while

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<sup>11/</sup> Id. Service is according to Minn. Stat. §§ 626.13, .14 and .16.  
<sup>12/</sup> Minn. Stat. Ann. § 346.215(1) (West Supp. 1977).  
<sup>13/</sup> Id.  
<sup>14/</sup> Minn. Stat. Ann. § 346.215(2) (West Supp. 1977).  
<sup>15/</sup> Minn. Stat. Ann. § 346.216 (West 1972).  
<sup>16/</sup> Id.  
<sup>17/</sup> Minn. Stat. Ann. § 346.22 (West 1972).

awaiting slaughter.

- (b) Carry a live animal with its feet or legs tied together, or in any other inhuman manner.
- (c) Detail livestock in cars or compartments for more than 28 consecutive hours without unloading them for at least five hours into pens equipped for rest, water and feeding unless due to a storm or to causes which cannot be avoided by due diligence and foresight. If the owner makes a written request which is separate and apart from the bill of loading, the period can be extended to 36 consecutive hours.
- (d) Permit animals being transported to be crowded together without sufficient space to stand, or so that they overlies, crush, wound or kill each other.

(4) Docking.

Any person who cuts, or assists in cutting, the bony part of a horse's tail, or permits such cutting to be done upon premises of which he is the owner, lessee or user can be imprisoned for up to 90 days, fined \$500, or both. <sup>18/</sup> When a horse is found upon the premises, or in the possession of, any person with its tail cut and the wound unhealed, this is

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<sup>18/</sup> Minn. Stat. Ann. § 346.23 (West 1972). For increase in penalty to \$500 see Minn. Stat. Ann. § 609.031 (West Supp. 1977); Crimes--Felonies--Misdemeanors, ch. 355, § 4, 1977 Minn. Sess. Law. Serv. (West) (amending Minn. Stat. 609.031 (1976)).

this is prima facie evidence that the offense was committed by such person. <sup>19/</sup> A fine which results from a complaint of the above nature by a member of a society to prevent cruelty to animals will be paid to that society. <sup>20/</sup>

(5) Exposing an Animal to the Elements.

It is a misdemeanor for a person having custody of an animal to allow that animal to stand, between the dates of November 1 and May 1, on a road, street or other unsheltered place within 60 days after the animal's hair has been removed by clipping or shearing unless the animal is blanketed. <sup>21/</sup>

Any peace officer in the state or any agent of a Minnesota society for prevention of cruelty to animals may remove and care for any animal (a) found exposed to the weather and not properly blanketed, (b) remaining more than 1 hour in cold or inclement weather without attention, or (c) not being properly fed and watered. <sup>22/</sup> When necessary the one removing the animal may deliver it to another to be sheltered and cared for. <sup>23/</sup> If the owner is known, he must be immediately notified. <sup>24/</sup> The person caring for the animal has a lien on the animal for its care and keeping, for the reasonable value of food and drink

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<sup>19/</sup> Minn. Stat. Ann. § 346.23 (West 1972).

<sup>20/</sup> Id.

<sup>21/</sup> Minn. Stat. Ann. § 346.24 (West 1972).

<sup>22/</sup> Minn. Stat. Ann. § 346.27 (West Supp. 1977).

<sup>23/</sup> Id.

<sup>24/</sup> Id.

furnished, and for the expenses of notice to the owner. <sup>25/</sup>

If the owner is unknown and cannot reasonably be ascertained, or if the owner does not respond to notice within 5 days, the animal will be treated as a stray (see section b, supra.) <sup>26/</sup>

A veterinarian may order that an animal taken into custody as above be immediately disposed of if the animal is suffering and beyond cure through reasonable care and treatment. <sup>27/</sup>

(6) Administering Poison.

Unjustifiably poisoning an animal can result in a fine of \$500, six months in the county jail, or both; or imprisonment in the state prison for up to two years. <sup>28/</sup> It is illegal to unjustifiably administer any poisonous or noxious drug or substance to any animal, to procure or permit another to so poison an animal, or to expose a poisonous or noxious drug to an animal with the intent that it be taken by such animal. <sup>29/</sup> This is true regardless of who owns the animal. <sup>30/</sup> It has been held that making it a felony to unjustifiably expose or administer poison to an animal is not so indefinite as to violate the constitution. <sup>31/</sup>

(7) Infectious Disease.

Any owner or person having charge of an animal who knows that the animal has a contagious disease, or knows it was recently

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<sup>25/</sup> Id.

<sup>26/</sup> Id.

<sup>27/</sup> Minn. Stat. Ann. § 346.27(2) (West Supp. 1977).

<sup>28/</sup> Minn. Stat. Ann. § 346.25 (West 1972).

<sup>29/</sup> Id.

<sup>30/</sup> Id.

<sup>31/</sup> State v. Eich, 240 Minn. 134, 282 N.W. 810 (1939).

exposed to such a disease, who (a) sells or barter the animal, (b) knowingly permits it to run at large, (c) knowingly permits it to come in contact with another animal, or (d) knowingly permits it to come into contact with another person without that person's knowledge and consent is guilty of a misdemeanor. <sup>32/</sup>

For a further discussion of infectiously diseased animals, see livestock sanitary board, *supra* and animal trespass, *supra*.

(8) Birds.

Any person who wantonly kills, maims or destroys a brown thrush, bluebird, martin, swallow, wren, catbird, robin, peewee, meadowlar, or other insect-devouring bird, or who destroys the nests or eggs of such bird, can be fined between \$1 and \$15. <sup>33/</sup>

(9) Chicks, Ducklings, etc.

A dyed or artificially colored chick, gosling, duckling or rabbit cannot be sold or offered for sale, raffled, offered as a prize or displayed in any public place. <sup>34/</sup>

Chicks, ducklings and goslings less than 4 weeks old may not be sold or offered for sale, raffled, or given as a prize, in quantity of less than 12 birds, to an individual person unless sold by an entity engaged in the business of selling such birds for agricultural or wildlife purposes. <sup>35/</sup>

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<sup>32/</sup> Minn. Stat. Ann. § 346.26 (West 1972). For increase in penalty, see note 18, *supra*.

<sup>33/</sup> Minn. Stat. Ann. § 346.28 (West 1972).

<sup>34/</sup> Minn. Stat. Ann. § 346.30 (West 1972).

<sup>35/</sup> Minn. Stat. Ann. § 346.31 (West 1972).



Stores or others offering chicks, ducklings, or goslings for sale, raffling them, displaying them to the public or offering them as a prize must operate brooders or other heating devices necessary to maintain the birds in good health and must keep adequate food and water available at all times. <sup>36/</sup>

Any person who violates one of the above three provisions of the law relating to chicks can be fined between \$10 and \$25. <sup>37/</sup> After a violation is called to the attention of the violator by a law enforcement officer, each day becomes a separate offense. <sup>38/</sup>

(10) Animal Fighting.

Cock-fighting, dog-fighting, bear-baiting, pitting one animal against another and similar acts of cruelty to animals are illegal. <sup>39/</sup> It is a misdemeanor to (a) engage in, be employed at or aid and abet any such activity, (b) receive money for admission to a place used, or about to be used, for such purposes, (c) willfully permit anyone to use premises for animal fighting if you are the owner, agent or occupant of the premises, or (d) use, train, or possess an animal for the purpose of animal fighting. <sup>40/</sup> Knowingly purchasing a ticket to an event of this type constitutes aiding and abetting. <sup>41/</sup>

It is also a misdemeanor to operate, run or participate in a "greased pig" contest or a contest where a chicken or

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<sup>36/</sup> Minn. Stat. Ann. § 346.32 (West 1972).

<sup>37/</sup> Minn. Stat. Ann. § 346.33 (West 1972).

<sup>38/</sup> Id.

<sup>39/</sup> Minn. Stat. Ann. § 346.29 (West 1972).

<sup>40/</sup> Id. For current penalty, see note 18, supra.

<sup>41/</sup> Minn. Stat. Ann. § 346.29 (West 1972).

turkey is thrown in the air and the object is to capture the chicken or turkey. <sup>42/</sup>

(12) Societies for Prevention of Cruelty.

The purpose of the Minnesota society for prevention of cruelty to animals, a.k.a. Minnesota humane society, is to inculcate humane principles, enforce the law and prevent cruelty, especially to animals. <sup>43/</sup> They are empowered to make rules governing the humane care, treatment, transportation and disposition by death or sale of animals necessary to accomplish its purposes. <sup>44/</sup> It may appoint agents to investigate or otherwise assist lawfully empowered officials in the prosecution of persons charged with cruelty to animals. <sup>45/</sup>

The governor, the commissioner of education, and the attorney general are ex officio members of the board of directors of the state bureau of animal protection. <sup>46/</sup>

It is the duty of the state bureau <sup>47/</sup> of animal protection to secure laws for prevention of wrongs to animals and to promote growth of education and sentiment favorable to protection of animals. <sup>48/</sup> The state society holds its annual meeting on the second Monday in November and makes a biennial report by

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<sup>42/</sup> Minn. Stat. Ann. § 346.34 (West 1972).

<sup>43/</sup> Minn. Stat. Ann. § 343.01 (West Supp. 1977). The societies' purpose used to include prevention of cruelty to children. See Minn. Stat. Ann. § 343.01 (West 1972) (amended 1975).

<sup>44/</sup> Minn. Stat. Ann. § 343.01 (West Supp. 1977).

<sup>45/</sup> Id.

<sup>46/</sup> Minn. Stat. Ann. § 343.05 (West Supp. 1977).

<sup>47/</sup> The society is a state bureau. Minn. Stat. Ann. § 343.04 (West Supp. 1977).

<sup>48/</sup> Minn. Stat. Ann. § 343.06 (West Supp. 1977).

October 1 of even numbered years. <sup>49/</sup>

County societies for the prevention of cruelty to animals may be formed in any county if they have at least seven incorporators. <sup>50/</sup> A county society may acquire and hold real property. <sup>51/</sup> A county board or a city council may appropriate up to \$4800 a year to maintain and support a cruelty prevention society, but no part of this appropriation can go to pay the salary of an officer of the society. <sup>52/</sup> Upon application by an agent of a county society, it is the duty of any law enforcement officer to investigate an alleged violation of the law relative to cruelty to animals, and to arrest any person found violating these laws. <sup>53/</sup> The officer shall take into possession any animal being cruelly treated and deliver it to officers of the society. <sup>54/</sup> Upon conviction, costs will be assessed against the violator to cover the reasonable value of care extended by the society. <sup>55/</sup>

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<sup>49/</sup> Minn. Stat. Ann. § 343.07 (West Supp. 1977); Minn. Stat. Ann. § 343.08 (West Supp. 1977).

<sup>50/</sup> Minn. Stat. Ann. § 343.10 (West Supp. 1977).

<sup>51/</sup> Minn. Stat. Ann. § 343.11 (West Supp. 1977).

<sup>52/</sup> Id.

<sup>53/</sup> Minn. Stat. Ann. § 343.12 (West Supp. 1977).

<sup>54/</sup> Id.

<sup>55/</sup> Id.

e. Liens.

A lien is basically a charge upon some property, in satisfaction of a debt, which arises by operation of law. There are various ways in which a lien upon an animal may arise. This section discusses three: (a) the veterinarian's lien, (b) the lien arising from service by a male animal, and (c) the lien which results from shoeing an animal.

Other liens in animals have been discussed under different topic headings. The lien for care of an animal taken into custody because it has been cruelly treated is discussed under cruelty to animals, and the lien upon animals doing damage and being distrained by the property owner is discussed under animal trespass.

(1) Veterinarians Lien.

Every licensed and registered veterinarian who performs services on an animal at the request of the owner or lawful possessor, and such services result in a fee of \$25 or more, has a lien upon the animal serviced. <sup>1/</sup> These services include, but are not limited to, surgical procedures, vaccines, antisera, virus, antibiotics. <sup>2/</sup> The vet must file <sup>3/</sup> a verified statement within 60 days after treatment. <sup>4/</sup> This statement must include (a) the kind and number of animals

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<sup>1/</sup> Minn. Stat. Ann. § 514.92(1) (West Supp. 1977).

<sup>2/</sup> Id.

<sup>3/</sup> Pursuant to Minn. Stat. §§336.9-401.

<sup>4/</sup> Minn. Stat. Ann. § 514.92(1) (West Supp. 1977).

treated, (b) the price agreed upon for such service, (c) the name of the person for whom such treatment was done, (d) a description of the animals treated, and if branded, the brand, (e) the dates when treatment was commenced and when it was completed, (f) the name of the owner of the animal, and (g) the name and address of the vet claiming the lien. <sup>5/</sup> The vet has one year from the date of last service to foreclose <sup>6/</sup> his lien. <sup>7/</sup> Inaccuracies in the lien statement do not affect the lien. <sup>8/</sup>

An animal treated by a vet at the owner or lawful possessor's request and not claimed for more than 10 days may be sold by the vet for the reasonable value of the animal. <sup>9/</sup> There must first be written notice of the completion of the care and of the proposed sale delivered to the owner or lawful possessor by certified mail. <sup>10/</sup> If the whereabouts of the owner or lawful possessor is unknown and cannot reasonably be ascertained, the notice must be published in a legal newspaper (circulated in the county where the animal is located) ten days before the sale. <sup>11/</sup> The notice must state the amount due and the date, place and time of the sale. <sup>12/</sup>

The proceeds of such a sale go first to the vet to

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<sup>5/</sup> Id.  
<sup>6/</sup> As prescribed under Article 9 of U.C.C.  
<sup>7/</sup> Minn. Stat. Ann. § 514.92(1) (West Supp. 1977).  
<sup>8/</sup> See Minn. Stat. Ann. § 514.92(2) (West Supp. 1977).  
<sup>9/</sup> Minn. Stat. Ann. § 514.93 (West Supp. 1977).  
<sup>10/</sup> Id.  
<sup>11/</sup> Id.  
<sup>12/</sup> Id.

reimburse him for the value of the treatment and the value of care and board given the animal, and then to the owner or lawful possessor of the animal. <sup>13/</sup> Any vet making such a sale must make a record, verified by oath, setting forth (a) the kind and number of animals sold, (b) amount realized from the sale, (c) amount claimed due the vet, (d) the name of the former owner or lawful possessor that requested the care and treatment performed by the vet, (e) the dates when the treatment was commenced and completed, (f) the date(s) when notice of the proposed sale was given to the owner or lawful possessor, (g) a description of the animal (with brand), (h) the name and address of the vet making the sale, and (i) the name and address of the purchaser(s). <sup>14/</sup> This record must be filed with the County Recorder within five days after the sale. <sup>15/</sup>

Nothing in this provision of the law alters or revokes a veterinarian's rights of detainer, lien and sale under the provisions of the law dealing with service liens on personal property. <sup>16/</sup>

(2) Lien for Service of Male Animals.

The owner of a bull, ram or boar kept for public service has a lien upon the offspring of such animal for the value of its service. <sup>17/</sup> In order to preserve this lien the owner must

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<sup>13/</sup> Id.

<sup>14/</sup> Id.

<sup>15/</sup> Id.

<sup>16/</sup> Minn. Stat. Ann. § 514.94 (West Supp. 1977). See Minn. Stat. §§ 514.18 - .22.

<sup>17/</sup> Minn. Stat. Ann. § 514.62 (West 1947).

file, <sup>18/</sup> within six months, a verified statement containing a description of the female, stating the time and place of the service and listing the amount due. <sup>19/</sup> A certified copy of this statement is sufficient to authorize the lienholder to take possession of the offspring at any time within one year after its birth and to foreclose the lien. <sup>20/</sup>

The owner of a stallion or jackass kept for public service does not have a lien upon the offspring of such animal. <sup>21/</sup>

(3) Lien for Shoeing Animals

Any person who shoes a horse, mule, ox, or other animal has a lien on that animal for a reasonable charge for the shoeing of the animal. <sup>22/</sup> This lien takes priority over all claims and liens upon the animal which have not been recorded, but the lien will not attach if the animal changes hands before the lien is filed. <sup>23/</sup>

To secure a lien, the claimant must file, <sup>24/</sup> within six months after the last shoeing of the animal, a statement under oath and a notice of his intention to claim a lien upon the animal for his charges in shoeing such animal. <sup>25/</sup> The

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<sup>18/</sup> Pursuant to Minn. Stat. § 336.9-401.

<sup>19/</sup> Minn. Stat. Ann. § 514.63 (West Supp. 1977).

<sup>20/</sup> *Id.* Foreclosure is pursuant to Article 9 of U.C.C.

<sup>21/</sup> Minn. Stat. § 514.64 created such a lien but it has been repealed.

<sup>22/</sup> See Minn. Stat. Ann. § 514.64 (West Supp. 1977).

<sup>23/</sup> Minn. Stat. Ann. § 514.23 (West 1947).

<sup>24/</sup> *Id.*

<sup>25/</sup> Pursuant to Minn. Stat. § 336.9-401. The filing officer files it in the same manner as a financing statement. Minn. Stat. Ann. § 514.27 (West Supp. 1977).

<sup>26/</sup> Minn. Stat. Ann. § 514.24 (West Supp. 1977).

statement must state the name of the person claiming the lien, the name of the owner of the animal, a description of the animal, and the amount claimed. <sup>26/</sup> The claimant may file successive liens upon the same animal, or he may include in any one claim his charges for previous shoeings but no lien can be had for a shoeing done more than six months prior to the filing of the notice of lien. <sup>27/</sup>

A certified copy of the statement and notice of lien is evidence only of the fact that the statement and notice was received and filed. <sup>28/</sup> A claimant must bring suit within six months of the filing of the claim -- but he must give 20 days notice of his intent to foreclose before he can bring suit. <sup>29/</sup> If the owner of the animal shod is personally served, the suit proceeds as a civil action; <sup>30/</sup> but if he cannot be found, the suit proceeds like attachment. <sup>31/</sup> If the shoer prevails, execution is issued as in attachment proceedings, and the animal is sold to satisfy the judgment. <sup>32/</sup> Expenses incurred are an additional lien and are included in the judgment. <sup>33/</sup>

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<sup>26/</sup> Minn. Stat. Ann. § 514.25 (West 1947).  
<sup>27/</sup> Minn. Stat. Ann. § 514.26 (West 1947).  
<sup>28/</sup> Minn. Stat. Ann. § 514.28 (West Supp. 1977).  
<sup>29/</sup> Minn. Stat. Ann. § 514.29 (West 1947).  
<sup>30/</sup> Minn. Stat. Ann. § 514.30 (West 1947).  
<sup>31/</sup> Minn. Stat. Ann. § 514.31 (West 1947).  
<sup>32/</sup> Minn. Stat. Ann. § 514.32 (West 1947).  
<sup>33/</sup> Minn. Stat. Ann. § 514.33 (West 1947).



f. Rustling

Rustling is the intentional shooting, killing, using, transferring, concealing, or retaining of possession of live cattle, swine or sheep, or the carcasses thereof, which belong to another without his consent and with the intent to permanently deprive the owner. <sup>1/</sup> If the value of the animal "rustled" exceeds \$2,500, the perpetrator can be fined \$10,000 and sentenced to up to 10 years in prison. <sup>2/</sup> If the value of the animal is between \$300 and \$2,500, the perpetrator can receive up to 5 years and \$5,000. <sup>3/</sup> If the value is less than \$300, the sentence is 90 days, or \$500, or both. <sup>4/</sup>

Buying, selling, transporting, or otherwise handling illegally acquired (as defined above) cattle, sheep, or swine or otherwise aiding or abetting rustling are crimes subject to the penalties described above. <sup>5/</sup> For purposes of prosecution, the value of different animals rustled within any 6-month period may be aggregated. <sup>6/</sup> Any person from whom cattle, sheep, or swine have been rustled may bring an action for treble (triple) damages plus the cost of suit and reasonable attorney's fees. <sup>7/</sup>

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<sup>1/</sup> See Minn. Stat. Ann. § 609.551(1) (West Supp. 1977).

<sup>2/</sup> Minn. Stat. Ann. § 609.551(1) (West Supp. 1977).

<sup>3/</sup> Crimes-Felonies-Misdemeanors, ch. 355, § 8, 1977 Minn. Sess. Law Serv. (West) (amending Minn. Stat. § 609.551 (1975)).

<sup>4/</sup> Id; Crimes-Felonies-Misdemeanors, ch. 355, § 4, Minn. Sess. Law Serv. (West) (amending Minn. Stat. § 609.031 (1976)).

<sup>5/</sup> Minn. Stat. Ann. § 609.551(2) (West Supp. 1977).

<sup>6/</sup> Minn. Stat. Ann. § 609.551(3) (West Supp. 1977).

<sup>7/</sup> Minn. Stat. Ann. § 609.551(4) (West Supp. 1977).

g. Game and Fur Farms

The raising of domestic fur-bearing animals <sup>1/</sup> is considered to be an agricultural pursuit and the pelts or products from such pursuit are considered agricultural products. <sup>2/</sup> For these reasons, a brief discussion of domestic fur farming and of the related activity of game farming is included in this book.

For a discussion of feeding carcasses to mink, see livestock sanitary board, *supra*.

(1) Domestic fur-bearing animals

No person can engage in fur farming unless he obtains a license from the commissioner of agriculture. <sup>3/</sup> The application for a license must be in writing accompanied by a \$10 fee, and must state (a) the name of the applicant, (b) a description of the premises upon which the business is to be conducted, (c) the species of animal to be raised, and (d) such further information as the commissioner may require. <sup>4/</sup> The commissioner shall grant the license after he has determined that the application is made in good faith and with the intent to carry on the business described in the application and that the facilities are adequate. <sup>5/</sup> Licenses expire on the 31st of December of the year when issued, and an application for renewal must be submitted before January 1st

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<sup>1/</sup> Domestic fur-bearing animals include fox, mink, chinchilla, karakul, marten, or fisher raised in captivity for two or more generations. Minn. Stat. Ann. § 17.35(2) (West 1963).

<sup>2/</sup> Minn. Stat. Ann. § 17.35(5) (West 1963).

<sup>3/</sup> Minn. Stat. Ann. § 17.35(6) (West Supp. 1977).

<sup>4/</sup> Id.

<sup>5/</sup> Id.

(accompanied by \$10). <sup>6/</sup> If the renewal is not applied for by January 1st, a \$2.50 penalty is imposed. <sup>7/</sup>

Every package of domestic animal pelts being transported or sold must have a tag identifying the pelts in the package. <sup>8/</sup> By January 31st of each year, every fur farmer must make a report to the commissioner of agriculture stating the number of pelts of each species sold during the preceding year. <sup>9/</sup>

Any violation of these provisions of the law is a misdemeanor. <sup>10/</sup>

In the opinion of the Attorney General of Minnesota, mink are not "domestic" animals whose health the livestock sanitary board is designed to protect; <sup>11/</sup> and they are not "livestock" under sections of the law prohibiting the feeding of garbage to livestock. <sup>12/</sup>

It is unlawful for any individual to import into Minnesota the European rabbit -- commonly known as the San Juan Hare of Cuniculus species and the Orystelbus-Cuniculus genus -- without permission of the commissioner of agriculture. <sup>13/</sup>

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<sup>6/</sup> Id.

<sup>7/</sup> Id.

<sup>8/</sup> Minn. Stat. Ann. § 17.35(7) (West 1963).

<sup>9/</sup> Minn. Stat. Ann. § 17.35(8) (West 1963).

<sup>10/</sup> Minn. Stat. Ann. § 17.35(10) (West 1963).

<sup>11/</sup> Op. Atty. Gen., 2936, February 3, 1961.

<sup>12/</sup> Op. Atty. Gen., 2936, June 9, 1959.

<sup>13/</sup> Minn. Stat. Ann. § 17.45 (West 1963).

(2) Game and fur farms

The breeding and propogating of fur-bearing animals, game birds, and deer is authorized only after acquiring a license from the commissioner of natural resources. <sup>14/</sup> This section is different from the foregoing section in that this section is not limited to "domestic" fur-bearing animals whereas the former section is, and this section focuses on "breeding and propogating" whereas the former section involved "raising." Animals governed by this provision of the law include squirrels, beaver, muskrats, fox, wolves, pheasants, and deer.

Before a license can be obtained, the applicant must first enclose an area in a manner approved by the commissioner of natural resources and sufficient to confine the animals. <sup>15/</sup> Once the license is issued, the licensee is deemed the owner of all wild animals and their progeny within the enclosure (except wild game birds). <sup>16/</sup> The license is transferable with the transfer of land used for the purposes of the license if the appropriate documents are filed with the commissioner of natural resources, but the entire license must be transferred. <sup>17/</sup> Every partner or associate in ownership or operation of the farm must have a separate license. <sup>18/</sup>

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<sup>14/</sup> Minn. Stat. Ann. § 99.27(1) (West 1977).

<sup>15/</sup> Id.

<sup>16/</sup> Minn. Stat. Ann. § 99.27(2) (West 1977).

<sup>17/</sup> Minn. Stat. Ann. § 99.27(3) (West 1977).

<sup>18/</sup> Id.

Fox and mink cannot be bought or sold for breeding purposes until it has been pen-bred for two successive generations. <sup>19/</sup> Beaver cannot be transported except under special permit from the commissioner. <sup>20/</sup>

No sale of live animals is valid unless the animals are actually delivered to the purchaser or the animals are segregated, identified, and kept separately. <sup>21/</sup> After segregation, the animals are assessed as personal property of the purchaser, and the licensee must notify the purchaser within 30 days of the death of any animal and by July 20th of each year of the number of increase. <sup>22/</sup>

Pelts and products of wild animals raised on game farms may be sold or transported only if tagged as prescribed by the commissioner of natural resources. <sup>23/</sup> Failure to tag can result in confiscation of all wild animals owned by the licensee. <sup>24/</sup>

These provisions of the law are not applicable if the animals being harbored don't propogate. <sup>25/</sup>

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<sup>19/</sup> Minn. Stat. Ann. § 99.27(5) (West 1977).

<sup>20/</sup> Id.

<sup>21/</sup> Minn. Stat. Ann. § 99.27(6) (West 1977).

<sup>22/</sup> Id.

<sup>23/</sup> Minn. Stat. Ann. § 99.27(7) (West 1977).

<sup>24/</sup> Id.

<sup>25/</sup> See Op. Atty. Gen., No. 11, p. 36, 1942 (wolves).

h. Bees

This section discusses state laws relating to the raising of bees. It includes a discussion of licensing, movement and sale, inspections and disease control, abandoned apiaries, hive construction, importation, unsanitary conditions, rearing queen bees, damages for ordered destruction of property, spraying of fruit trees, violations of the law, and posting of a statement of ownership.

At common law, bees were regarded as wild animals and once they escaped from one man, they were any other man's property. <sup>1/</sup> In states where bees are economically important, the general rule has developed that so long as the bees can be found and identified, the right of the original owner will not be lost regardless of where or when they swarm or on whose property they finally settle. <sup>2/</sup>

It is a general rule that no recovery may be had against the owner of bees for injuries inflicted by them except on grounds of negligence. <sup>3/</sup> Knowledge of vicious tendencies of the bees combined with putting them in the proximity of sweaty horses, to which bees are attracted, constitute negligence. <sup>4/</sup>

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<sup>1/</sup> See 2 Blackstone, Commentaries 392.

<sup>2/</sup> Hannah and Krausz, Law and Court Decisions in Agriculture at 336 (1st Ed. 1968). See Annot., 39 A.L.R. 352 (1925).

<sup>3/</sup> E.g., *Parsons v. Manser*, 119 Iowa 88, 93 N.W. 86 (1903).

<sup>4/</sup> *Id.* (bees killed horses). See *Ferriera v. D'Asaro*, 152 So. 2d 736 (Fla. 1963).

<sup>5/</sup> *People of Redford Township v. McGregor*, 65 Mich. App. 747, 238 N.W.2d 183 (1975).

The keeping of bees is not itself a nuisance and whether it has become a nuisance is a question to be judicially determined in each case. <sup>5/</sup>

In most cases, beekeeping qualifies as an agricultural pursuit under laws having an agricultural exemption. <sup>6/</sup>

(1) Licenses

It is unlawful to possess bees unless they are registered with the commissioner of agriculture. <sup>7/</sup> An application for registration must be filed within 30 days of obtaining possession of bees and must describe the location of each of applicant's apiaries <sup>8/</sup> and the number of colonies in each apiary. <sup>9/</sup> There is a \$5 registration fee. <sup>10/</sup> Each registration certificate expires on June 30th following its issuance and must be renewed within 30 days. <sup>11/</sup>

Anyone who owns 11 or more bee colonies must pay an annual inspection fee of 15¢ per colony. <sup>12/</sup> The fee is based on a colony count taken on June 15 of each year. <sup>13/</sup> A penalty of 50%

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<sup>5/</sup> People of Redford Township v. McGregor, 65 Mich. App. 747, 238 N.W.2d 183 (1975).

<sup>6/</sup> Hannah and Krausz, Law and Court Decisions on Agriculture at 336 (1st Ed. 1968). But see People v. Kasold, 153 Cal. App. 2d Supp. 891, 314 P.2d 241 (1957). (Bees not domestic animals within municipal code which authorizes keeping of domestic animals in conjunction with residential lot.)

<sup>7/</sup> Minn. Stat. Ann. § 19.19(1)(West Supp. 1977).

<sup>8/</sup> An apiary is any place where one or more colonies of bees are kept, together with all equipment used in maintaining and operating it. Minn. Stat. Ann. § 19.18(2)(West 1963).

<sup>9/</sup> Minn. Stat. Ann. § 19.19(1)(West Supp. 1977).

<sup>10/</sup> Id.

<sup>11/</sup> Id.

<sup>12/</sup> Minn. Stat. Ann. § 19.19(2)(West Supp. 1977).

<sup>13/</sup> Id.

of both the inspection fee and registration fee is imposed for failure to renew by August 1 or failure to register within 30 days after a new apiary is established. <sup>14/</sup>

Beekeepers from other states who desire to locate apiaries in Minnesota must submit, to the commissioner of agriculture, a legal description of apiary locations and must pay in advance the required registration fee plus an initial inspection fee of \$1.50 per colony. <sup>15/</sup> The initial inspection fee does not apply to bees imported from bordering states if that state does not require Minnesota entrants to pay an initial inspection or entrance fee. <sup>16/</sup>

(2) Movement or sales

No person can sell, offer for sale, or transport either bees or any product of bees without first obtaining a permit from the commissioner of agriculture. <sup>17/</sup> This does not apply to anyone selling products of bees to someone who uses these products solely in making or manufacturing other articles to be sold to the public, <sup>18/</sup> and it does not apply to the sale of raw honey to the public. <sup>19/</sup>

An inspection fee of \$.25 per colony is charged each owner requesting inspection service prior to interstate shipment. <sup>20/</sup> If an inspection is requested prior to or after the regular inspections is conducted in a locality, the fee will be as mutually agreed upon by the owner and the commissioner of agriculture. <sup>21/</sup>

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<sup>14/</sup> Id.

<sup>15/</sup> Minn. Stat. Ann. § 19.19(4) (West Supp. 1977).

<sup>16/</sup> Id.

<sup>17/</sup> Minn. Stat. Ann. § 19.20 (West 1963).

<sup>18/</sup> Id.

<sup>19/</sup> Id.

<sup>20/</sup> Minn. Stat. Ann. § 19.20(4) (West Supp. 1977).

<sup>21/</sup> Minn. Stat. Ann. § 19.20(5) (West Supp. 1977).



There is an action for breach of warranty in the sale of bees. <sup>22/</sup> Where bees purchased were represented to be free of disease, and they were not, and they were placed near other colonies of bees which resulted in the death of all the bees by disease, the purchaser was entitled to recover for the loss resulting from breach of warranty. <sup>23/</sup> The damage award for fraud in inducement of a contract is the difference in value between what the party defrauded parted with and what he received. <sup>24/</sup>

(3) Inspections, disease control

The commissioner of agriculture may inspect all apiaries once a year, and he must investigate outbreaks of bee diseases, taking suitable measures to eradicate or control the disease. <sup>25/</sup> The commission may enter any private or public premises and have access to any apiary when he is attempting to ascertain the existence of a bee disease. <sup>26/</sup> If the disease can be controlled, it will be treated; if it cannot, the colony will be destroyed by fire. <sup>27/</sup> Equipment found in any diseased apiary may be destroyed under direction of the commissioner. <sup>28/</sup>

When an apiary has been inspected and found free of disease, the owner is issued a certificate of inspection. <sup>29/</sup> This certificate can be revoked by the commissioner if he finds that

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<sup>22/</sup> Sampson v. Penney, 151 Minn. 411, 182 N.W. 135 (1922).

<sup>23/</sup> Id.

<sup>24/</sup> Rikto v. Grove, 102 Minn. 312, 113 N.W. 629 (1907).

<sup>25/</sup> Minn. Stat. Ann. § 19.21 (West 1963).

<sup>26/</sup> Minn. Stat. Ann. § 19.22 (West 1963).

<sup>27/</sup> Id.

<sup>28/</sup> Id.

<sup>29/</sup> Minn. Stat. Ann. § 19.23 (West 1963).

due cause exists. 30/ If a disease is found to exist, all apiaries, bees, bee products, buildings, premises, bee equipment, and appliances are placed under quarantine. 31/ The commissioner may also declare surrounding or adjoining premises to be under quarantine. 32/ Before leaving an infected apiary, the commissioner or his inspector will take such measures as are necessary to prevent the spread of any bee diseases. 33/

If an "abandoned" apiary (see definition, next subsection) is found diseased, the commissioner will have it destroyed. 34/

Any person keeping bees must destroy all combs and frames taken from a diseased colony. 35/ No combs, used beekeepers' supplies, or bees, except in combless packages and with food not made into honey, may be sold or removed from the premises unless inspected and authorized by permit by the commissioner of agriculture. 36/

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30/ Id.

31/ Minn. Stat. Ann. § 19.24 (West 1963).

32/ Id.

33/ Minn. Stat. Ann. § 19.25 (West 1963).

34/ Minn. Stat. Ann. § 19.27 (West 1963).

35/ Minn. Stat. Ann. § 19.29 (West 1963).

36/ Minn. Stat. Ann. § 19.33 (West 1963).

(4) Abandoned apiaries

An abandoned apiary is one where the owner or operator fails to: 37/

(a) inspect each colony in the spring and destroy any colony containing *Bacillus* larvae, American foulbrood,

(b) provide super room during the honey flow,

(c) remove the honey cup at the end of the season,

(d) inspect each colony in the fall when the crop is removed and destroy any colony containing American foulbrood, and

(e) provide reasonable and adequate attention to each colony during the year to prevent robbing which might jeopardize the welfare of neighboring colonies through the spread of disease.

When the commissioner deems an apiary to be abandoned, he will give written notice to the owner or operator, if he can be located, that he deems the apiary abandoned. 38/ If he cannot be located, notice is served on the owner of the land. 39/ If the apiary continues to be abandoned for 60 days after notice, the commissioner will seize it for sale or destruction. 40/

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37/ Minn. Stat. Ann. § 19.18(12) (West 1963).

38/ Minn. Stat. Ann. § 19.26 (West 1963).

39/ Id.

40/ Id. See Minn. Stat. Ann. § 19.28 (West 1963).

If the apiary is sold (by public auction), the purchaser must agree to operate it in a safe and proper manner.<sup>41/</sup> It cannot be sold to the person who abandoned it.<sup>42/</sup> Any surplus over sale expenses and payment of all encumbrances or liens is paid to the owner.<sup>43/</sup>

(5) Hive construction

A beehive must contain movable frames such as will cause the bees to construct a brood comb.<sup>44/</sup> The frame must be constructed in such manner that any frame may be removed without injury to other combs in the hive.<sup>45/</sup>

Any hive in which bee diseases are found to exist and in which bees have died must be securely closed, and it must remain closed so long as it remains in any place where bees may gain access to it.<sup>46/</sup>

(6) Importation

Bee in combless packages or on combs, used hives and used apiary appliances brought into Minnesota must be accompanied by a certificate of health issued by the official bee inspector of the state or country wherefrom it is being brought.<sup>47/</sup> The certificate must certify that the bees are free from disease and must be based upon an inspection within 60 days of the date of

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<sup>41/</sup> Minn. Stat. Ann. § 19.26 (west 1963).  
<sup>42/</sup> Id.  
<sup>43/</sup> Id.  
<sup>44/</sup> Minn. Stat. Ann. § 19.30 (West 1963).  
<sup>45/</sup> Id.  
<sup>46/</sup> Id.  
<sup>47/</sup> Minn. Stat. Ann. § 19.31 (West 1963).

shipment.<sup>48/</sup> The importer must obtain a permit from the commissioner of agriculture at least 30 days prior to the importation, and the bees must be registered immediately after entering the state.<sup>49/</sup> A separate statutory provision reiterates the need for a certificate of health for importing bees in combless packages.<sup>50/</sup>

Restrictions on bee importation have been held to be a reasonable exercise of police power which does not unreasonably restrict interstate commerce.<sup>51/</sup>

(7) Unsanitary conditions

If the commissioner of agriculture finds that a honey house, or a building in which honey is stored, graded or processed, is being operated in an unsanitary condition, he will notify the owner or operator and such owner or operator will have 30 days to get the premises cleaned up.<sup>52/</sup>

(8) Rearing queen bees

Any person engaged in rearing queen bees for sale, and who is preparing mailing-cages, must in such preparation use honey which has been boiled for at least 30 minutes or use candy which does not contain honey.<sup>53/</sup>

All queen rearing and queen mating apiaries will be inspected at least once during each summer by the commissioner of agriculture.<sup>54/</sup>

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<sup>48/</sup> Id.

<sup>49/</sup> Id.

<sup>50/</sup> Minn. Stat. Ann. § 19.32 (West 1963).

<sup>51/</sup> See, e.g., Trescotty, Connor, 390 F. Supp. 765 (D.C. Fla. 1975).

<sup>52/</sup> Minn. Stat. Ann. § 19.34 (West 1963).

<sup>53/</sup> Minn. Stat. Ann. § 19.35 (West 1963).

<sup>54/</sup> Id.

If diseases are found to exist in such apiaries, no queen bees can be shipped until the commissioner declares the apiary to be free of disease.<sup>55/</sup>

(9) Damages

No damages are awarded to the owner or operator of an infected apiary, bees, bee equipment, appliances, or bee products destroyed under these provisions of the law.<sup>56/</sup> But a beekeeper whose bees were killed by a neighbor's crop dusting has been held to be entitled to recover for the loss of bees.<sup>57/</sup>

(10) Fruit tree spraying

Fruit trees in bloom cannot be sprayed with any material which is injurious to bees.<sup>58/</sup>

(11) Violations

It is unlawful to resist, impede or hinder the commissioner of agriculture in the performance of his duties as described above.<sup>59/</sup>

It is a misdemeanor to (a) expose comb, honey, frames, quilts, empty hives, covers, bottom boards, tools, or appliances contaminated by infected material, or to (b) violate any of the provisions of the law described above.<sup>60/</sup> In addition, bees on combs, used hives and used apiary appliances brought into this state in violation of the law may be seized and destroyed by the commissioner.<sup>61/</sup>

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<sup>55/</sup> Id.

<sup>56/</sup> Minn. Stat. Ann. § 19.37 (West 1963).

<sup>57/</sup> McKennon v. Jones, 244 S.W.2d 138 (Ark. 1951).

<sup>58/</sup> Minn. Stat. Ann. § 19.38 (West 1963).

<sup>59/</sup> Minn. Stat. Ann. § 19.36 (West 1963).

<sup>60/</sup> Minn. Stat. Ann. § 19.40 (West 1963).

<sup>61/</sup> Id.

(12) Posting statement of ownership

Any owner or possessor of an apiary must, unless it is located at the owner's place of business or beekeeping headquarters, post and keep posted in a prominent place at each apiary a statement of the ownership of the apiary, including the name and address of the owner.<sup>62/</sup>

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<sup>62/</sup> Minn. Stat. Ann. § 19.41 (West Supp. 1977).

i. Poultry

Poultry can be defined as domestic birds which serve as a source of eggs and meat and which include, among others, chickens, ducks and turkeys. The following subsections discuss the powers of the commissioner of agriculture in poultry improvement, advertising and labelling, poultry disease eradication, cancellation of certification, licensing, baby chick auctions and poultry dealers' registration.

Eggs are discussed under Food, *infra*. Turkey promotion is discussed under Trade Practices, Marketings, *infra*. Display and sale of baby chicks is discussed under Cruelty to Animals, *supra*.

The class of domestic animals includes all animals which by habit or training live in association with man, to include poultry.<sup>1/</sup> Thus a goose is within the provisions of a statute relating to cruelty to animals,<sup>2/</sup> and a turkey is an animal within the meaning of a statute rendering the owner of a dog liable for injury inflicted by it on any sheep, swine, catter or other domestic animal.<sup>3/</sup>

(1) Powers and duties of commissioner of agriculture<sup>4/</sup>

The commissioner of agriculture has the power to employ such persons as are necessary to carry out the provisions of the law described in the following subsections, and to fix the salaries of such employees. He has been directed by the legislature to adopt plans whereby poultry owners and breeders may, upon application, have their flocks, culled, inspected and supervised so that the

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<sup>1/</sup> Annot., 14 A.L.R. 745 (1921).

<sup>2/</sup> State v. Bruner, 111 Ind. 98, 12 N.E. 103 (1887).

<sup>3/</sup> Tillery v. Crook, 297 S.W.2d 9 (Mo. 1957).

<sup>4/</sup> Minn. Stat. Ann. § 29.021 (West Supp. 1977).



flocks may be accredited and certified for standard type and egg quality and production. Likewise, poultry hatcheries and dealers may be accredited and certified as hatching and selling products produced only from accredited and certified flocks. The commissioner is authorized to promulgate rules and regulations to accomplish this, and he may prescribe uniform terminology to apply to accreditation and certification.<sup>5/</sup>

The commissioner is authorized to adopt the "standard breeding plant" sponsored by the United States Department of Agriculture and to cooperate with that department in matters of poultry improvement, egg quality and production.<sup>6/</sup> He is authorized to prescribe and collect fees for inspection and supervision, and to prescribe and furnish labels, leg bands and certificates of accreditation and certification and collect fees for this.<sup>7/</sup> Fees will be fixed by the commissioner at the beginning of each fiscal year and adjusted, if necessary, every six months.

In general, the commissioner may do such other things as may be necessary to improve poultry breeding and practices and egg quality and production.

(2) Advertising, labelling

Owners of accredited and certified poultry breeding flocks and hatcheries have the right to use the terminology prescribed by the commissioner of agriculture in their literature and advertising

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<sup>5/</sup> Minn. Stat. Ann. § 29.021 (West Supp. 1977).

<sup>6/</sup> Id.

<sup>7/</sup> Id.

and on shipping labels.<sup>8/</sup> The commissioner may require the submission of literature and advertising to him for review and approval.<sup>9/</sup>

All poultry and poultry products shipped must be uniformly labeled as prescribed by the commissioner of agriculture except that labels pertaining to disease, or freedom therefrom, must be approved by the livestock sanitary board.<sup>10/</sup>

No person, association, etc., can use in its literature, advertising, or on shipping labels any words or phrases implying or indicating a breeding or a disease eradication in conjunction with either the word "state" or the word "Minnesota", as related to poultry hatchery or a poultry breeding flock, except as set forth in the law.<sup>11/</sup>

See subsection (5) for discussion of required labelling for sale of baby chicks.

(3) Poultry disease eradication

The livestock sanitary board has control over matters pertaining to poultry diseases and the control and eradication thereof.<sup>12/</sup> The L.S.B. is authorized to formulate and enforce regulations whereby owners of poultry breeding flocks may, upon agreement with the board, have their flocks examined, tested and officially designated as meeting the qualifications for any stage of

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<sup>8/</sup> Minn. Stat. Ann. § 29.031 (West 1963). See Minn. Reg. AGR §§ 394, 398, 399, 444, 447.

<sup>9/</sup> Minn. Stat. Ann. § 29.031 (West 1963).

<sup>10/</sup> Minn. Stat. Ann. § 29.061 (West 1963). See Minn. Reg. L.S.B. §§ 6, 30-34.

<sup>11/</sup> Minn. Stat. Ann. § 29.071 (West 1963).

<sup>12/</sup> Minn. Stat. Ann. § 29.051 (West 1963).

eradication of any specified infectious disease--but only if personnel are available and funds are appropriated for the use of the board in making such tests.<sup>13/</sup>

(4) Cancellation of certification

The commissioner of agriculture may cancel any certificate of accreditation or certification issued under his authority, and the L.S.B. may cancel any certificate of testing, approval or certification issued under its authority.<sup>14/</sup>

Any person who violates any section of the law relating to poultry accreditation and certification is guilty of a misdemeanor.<sup>15/</sup>

(5) Licensing baby chick auctions

A permit must be obtained from the commissioner of agriculture before baby chicks are offered for sale at an auction, except for public sales conducted by farmers selling baby chicks hatched on their own farms.<sup>16/</sup> A baby chick is any domestic four under six weeks.<sup>17/</sup>

The application for a permit goes to the commissioner of agriculture and must be signed by the person who proposes to conduct the sale and by the person who owns the property on which the sale is conducted.<sup>18/</sup> The application must designate the data of the

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<sup>13/</sup> Id. See Minn. Reg. L.S.B. 6, 8, 30-34.

<sup>14/</sup> Minn. Stat. Ann. § 29.081 (West 1963).

<sup>15/</sup> Id.

<sup>16/</sup> Minn. Stat. Ann. § 29.091(1) (West 1963).

<sup>17/</sup> Minn. Stat. Ann. § 29.091(6) (West 1963).

<sup>18/</sup> Minn. Stat. Ann. § 29.091(2) (West 1963).

proposed sale, the number and breeds of chicks offered for sale and the name and address of the person by whom the chicks were hatched.<sup>19/</sup>

A \$15 fee is required for each day, or fraction of a day, during which it is proposed that the sale of chicks will take place.<sup>20/</sup>

The commissioner of agriculture may grant or deny the permit and may require, as a condition of granting, that the applicant submit information as to the condition of health of the baby chicks including evidence as to the health of the parent flock.<sup>21/</sup>

Before any chicks are offered for sale, each box or crate must be plainly labelled with:<sup>22/</sup>

- (a) the name of the breed,
- (b) date hatched,
- (c) number of chicks within the container,
- (d) name and address of persons by whom hatched,
- (e) place where hatched, and
- (f) if representation as to sex of chicks is made, the minimum number of pullets or cockerals, as the case may be.

Within three days after a sale of chicks has been held, the person who conducted the sale must send a statement to the commissioner of agriculture giving a list of the number and kinds of chicks sold, together with a copy of any representations and guaranties made.<sup>23/</sup> The person conducting the sale is held to have full knowledge of all representations and guaranties made and is liable for such.<sup>24/</sup>

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<sup>19/</sup> Id.

<sup>20/</sup> Id.

<sup>21/</sup> Id.

<sup>22/</sup> Minn. Stat. Ann. § 29.091(3) (West 1963).

<sup>23/</sup> Minn. Stat. Ann. § 29.091(4) (West 1963).

<sup>24/</sup> Id.

Any person who violates the law as described in this subsection, (5), is guilty of a misdemeanor.<sup>25/</sup> Any person who violates this section of the law two or more times is guilty of a gross misdemeanor for each offense after the first.<sup>26/</sup>

(6) Dealers' registers

Every person who engages in the business of buying chickens, turkeys or other domestic fowl must maintain a complete record of all transactions in a ledger or other suitable book.<sup>27/</sup> This is called a dealer's register.<sup>28/</sup> The register must contain a complete record of each purchase the dealer makes to include the name and address of the person from whom bought, and, if other than a regular customer, from whom the buyer has made similar purchases within one year:

- (a) the means by which they were transported,
- (b) the type of conveyance,
- (c) if by motor vehicle, the license number of each motor vehicle,
- (d) the date of the purchase, and
- (e) the number, kind, species and general description of all fowl involved in the transportation.<sup>29/</sup>

Every properly kept register is prima facie evidence of the truth and accuracy of the facts contained therein.<sup>30/</sup> It is always

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<sup>25/</sup> Minn. Stat. Ann. § 29.091(4) (West 1963).  
<sup>26/</sup> Id.  
<sup>27/</sup> Minn. Stat. Ann. § 29.201 (West 1963).  
<sup>28/</sup> Id.  
<sup>29/</sup> Id.  
<sup>30/</sup> Minn. Stat. Ann. § 29.203 (West 1963).

open to inspection and examination by any peace officer or public official charged with law enforcement, as often and as required by him.<sup>31/</sup>

Anyone who fails to keep a register; or who records false, untruthful, deceptive or misleading data in a register; or who changes, alters, destroys, mutilates, injures, secrets, conceals, or withholds from inspection any register is guilty of a misdemeanor.<sup>32/</sup> This misdemeanor is separate and in addition to any other crime or offense committed in connection with the transaction.<sup>33/</sup>

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<sup>31/</sup> Id.

<sup>32/</sup> Minn. Stat. Ann. § 29.205 (West 1963).

<sup>33/</sup> Id.

## 2. Tractors, Machinery and Farm Trucks

The succeeding sections bring together Minnesota law that relates to farm machinery and equipment.

Three of the sections are related in that they involve motor vehicle law. These three sections are highway traffic regulation, motor vehicle registration tax and certificates of title. All three involve distinctions and exceptions to motor vehicle regulation that apply to tractors, implements of husbandry, farm trucks, etc.

The two less directly related sections discuss the exemption of farm equipment from legal process and repurchase requirements involved when an agricultural implement dealership is terminated.

### a. Traffic regulation

This section is a potpourri of the different exceptions and distinctions in highway traffic regulation that relate to agricultural and the food and fiber system. Motor vehicle registration tax is discussed in the succeeding section.

The first subsection deals with driver's licenses. It discusses, in order,

- (a) vehicles the driving of which does not require a license,
- (b) classes of driver's licenses, and
- (c) age limitations on procuring a license, including the restricted farm work license exception.

The remaining subsections deal more explicitly with traffic regulation as it exists under Chapter 169 of the Minnesota Code. Chapter 169 is applicable, where appropriate, to persons riding an

animal drawing a vehicle upon a roadway.<sup>1/</sup> The topics discussed in these subsections are speed restrictions on implements of husbandry, slow moving vehicle emblems, lights, brakes, noise regulation, seat belts, vehicle width and length, bumpers, tires, and wheel flaps.

(1) License to operate

Unless expressly exempted, no person can drive a motor vehicle<sup>2/</sup> upon a street or highway in Minnesota unless he has a license valid under the laws of this state.<sup>3/</sup> Certain persons are specifically exempt by statute.<sup>4/</sup> This includes "Any person while driving or operating any farm tractor,<sup>5/</sup> or implement of husbandry<sup>6/</sup> temporarily operated or moved on a highway."<sup>7/</sup>

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<sup>1/</sup> Minn. Stat. Ann. § 169.03(8) (West Supp. 1977).

<sup>2/</sup> "Motor vehicle" is every vehicle which is self-propelled and any vehicle propelled or drawn by a self-propelled vehicle, and not deriving its power from overhead wires, except snowmobiles. Minn. Stat. Ann. § 171.01(3) (West Supp. 1977).

<sup>3/</sup> Minn. Stat. Ann. § 171.02(1) West Supp. 1977).

<sup>4/</sup> See Minn. Stat. Ann. § 171.03 (West Supp. 1977).

<sup>5/</sup> "Farm tractor" is defined as a motor vehicle designed and used primarily as a farm implement for drawing plows, mowing-machines and other implements of husbandry. Minn. Stat. Ann. § 171.01(4) (West 1960).

<sup>6/</sup> "Implement of husbandry" is not defined under this chapter. Under ch. 169, Highway Traffic Regulation, it is defined as a vehicle designed and adopted exclusively for agriculture, horticulture or livestock-raising operations or lifting or carrying an implement of husbandry and in either case not subject to registration if used upon highways. Minn. Stat. Ann. § 169.01(55) (West 1960).

<sup>7/</sup> Minn. Stat. Ann. § 171.03(2) (West Supp. 1977).



According to the Attorney General, one who has had his license suspended cannot drive his tractor to town to conduct banking business because the tractor is not on the highway "temporarily" (it is being used for a complete trip to town and return), and because it is not being used in connection with farming operations, and the legislature intended that the exemption be granted only in connection with farming operations.<sup>8/</sup>

For a license to be valid, it must be for the type and class of vehicle being driven.<sup>9/</sup> A Class C license is valid for all farm trucks<sup>10/</sup> ~~operated by the owner, a member of his immediate family or an employee not primarily employed to operate the farm truck, as well as for single unit two axle vehicles not in excess of 24,000 pounds GVW including vehicles with a temporary auxilliary axle.~~<sup>11/</sup> A Class B license is good for all other single unit vehicles including buses and a Class A license is valid for any vehicle or combination thereof.<sup>12/</sup>

~~No license can be issued to any person under age 17, or to any person under age 18 who has not successfully completed a course in driver education.~~<sup>13/</sup> One exception to this is that The commissioner of public safety may issue a restricted farm work license to operate a motor vehicle to someone who is 15, and except for his age, qualified to hold a driver's license.<sup>14/</sup>

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<sup>8/</sup> Op. Atty. Gen., 291, Oct. 5, 1955.

<sup>9/</sup> Minn. Stat. Ann. § 171.02(1) (West Supp. 1977).

<sup>10/</sup> As defined in Minn. Stat. 168.011(17).

<sup>11/</sup> Minn. Stat. Ann. § 171.02(2) (West Supp. 1977). Temporary auxilliary axle is defined in Minn. Stat. § 169.67(4). Id. A Class C license also includes fire trucks. Id.

<sup>12/</sup> Minn. Stat. Ann. § 171.02(2) (West Supp. 1977).

<sup>13/</sup> Minn. Stat. Ann. § 171.04(1) (West Supp. 1977).

<sup>14/</sup> Minn. Stat. Ann. § 171.041 (West Supp. 1977).

This restricted license is issued solely to authorize the licensee to assist his parents or guardians with farm work.<sup>15/</sup> A person holding a restricted license may operate a motor vehicle only during daylight hours and only within 20 miles of his parents' or guardians' farm house.<sup>16/</sup> In no case can he operate a motor vehicle in a city of the first class.<sup>17/</sup> An application for a restricted farm work license must be accompanied by a written verified statement by the applicant's parent or guardian setting forth the necessity for the license.<sup>18/</sup>

15.1.2 (2) ~~Speed restrictions~~

It is a misdemeanor to drive or tow a self-propelled implement of husbandry <sup>19/</sup> at a speed in excess of 30 miles per hour.<sup>20/</sup>

(3) ~~Slow moving vehicle emblems~~

All animal-drawn vehicles, implements of husbandry,<sup>21/</sup> and other machinery designed to operate at a speed of 25 mph or less must display a triangular slow moving vehicle emblem.<sup>22/</sup> This emblem must be visible up to 600 feet behind the vehicle.<sup>23/</sup> When a unit towing an implement of husbandry or other machinery displays an emblem which is visible from a distance of 600 feet to the rear, it is necessary to put an emblem on the secondary unit.<sup>24/</sup>

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<sup>15/</sup> Id.

<sup>16/</sup> Id.

<sup>17/</sup> Id.

<sup>18/</sup> Id.

<sup>19/</sup> "Implements of husbandry" defined at note 6, *supra*.

<sup>20/</sup> Traffic Regulation--Speed of Implements of Husbandry, ch. 397, § 1, 1977 Minn. Sess. Law Serv. (West) (Adding Minn. Stat. § 169.145).

<sup>21/</sup> See note 6, *supra*.

<sup>22/</sup> Minn. Stat. Ann. § 169.522(1) (West Supp. 1977).

<sup>23/</sup> Id.

<sup>24/</sup> Id.

~~Since January 1, 1975 all slow moving vehicle emblems sold in Minnesota have to have been designed so that when properly mounted, they are visible from 600 feet to the rear on lower beam of head lamps of motor vehicles.~~<sup>25/</sup> Since January 1, 1970 <sup>a</sup> violation of this requirement ~~to display a slow moving vehicle emblem has been~~ <sup>is</sup> admissible evidence in a civil cause of action.<sup>26/</sup>

~~The use of this emblem is restricted to slow moving vehicles and its use on any other type of vehicle or stationary object on the highway is prohibited.~~<sup>27/</sup> Note that the emblem is required for vehicles designed to go 25 mph or less, but that implements of husbandry may lawfully travel up to 30 mph. (See (2) above.) This allows two different interpretations:

- ~~(a) An implement of husbandry travelling 30 mph is deemed designed by its very nature to travel 25 mph or less and thus must have an emblem, or~~
- ~~(b) Any vehicle travelling 30 mph is obviously not designed to travel 25 mph or less since it is in fact travelling 30 mph, and for this reason it is prohibited from using a slow moving vehicle emblem.~~

~~The statute requiring that slow moving vehicle emblems be displayed should have defined the class of vehicles affected more definitively than those "designed to operate at a speed of 25 mph or less". Perhaps all implements of husbandry should be required to display the emblems since by law they cannot travel in excess of 30 mph.~~

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<sup>25/</sup> Id.

<sup>26/</sup> Id.

<sup>27/</sup> ~~Minn. Stat. Ann. § 169.522(2) (West Supp. 1977).~~

~~Vehicles required to display a slow moving vehicle emblem cannot be sold or leased unless they are equipped with a slow moving vehicle emblem mounting device. <sup>28/</sup> Vehicles designed to be completely mounted on another unit are excepted from this specific requirement. <sup>29/</sup>~~

~~(4) Lights~~

~~The provisions of chapter 169, Highway Traffic Regulations, of the Minnesota statutes which require specific equipment on Vehicle equipment specifications vehicles are not applicable to farm tractors and implements of husbandry except where specifically made applicable. <sup>30/</sup>~~

~~For these purposes, a specialized vehicle resembling a low-slung two-wheel trailer having a short bed on platform shall be deemed to be an implement of husbandry when used exclusively to transport implements of husbandry, but such a vehicle must have proper lighting to operate on the highway before sunrise or after sunset. <sup>31/</sup>~~

~~At times <sup>(a)</sup> when headlights are required to be on, <sup>32/</sup> every farm tractor and self-propelled unit of farm equipment must have at least one headlight, white or amber, and one red taillight, <sup>(a)</sup>~~

~~<sup>(b)</sup> every self-propelled unit of farm equipment must display two red reflectors, each at least 15 square inches in area and each visible to the rear. <sup>(b)</sup> Every combination of a self-propelled and towed unit of farm equipment must have one light~~

*In addition,*

28/ Minn. Stat. Ann. § 169.522(3) (West Supp. 1977).

29/ Id.

30/ Minn. Stat. Ann. § 169.47(1) (West Supp. 1977).

31/ Id.

32/ Lights must be on from sunset to sunrise and at other times when visibility is impaired. See Minn. Stat. Ann. § 169.48 (West Supp. 1977).

which indicates, as nearly as practicable, the extreme left projection of the combination, ~~and the light to the front must be white or amber while the light to the rear must be red,~~ <sup>(c) a white or amber front light and red rear light</sup> and (d) the last unit of every combination of farm equipment must display two red reflectors, each at least 15 square inches in area, visible to the rear. <sup>33/</sup>

Animal-drawn vehicles must be equipped with lights at times when lights are required. <sup>34/</sup> ~~These lights must be white light visible 500 feet to the front and red light visible 500 feet to the rear.~~ <sup>35/</sup> ~~This provision of the law is applicable to farm tractors and implements of husbandry.~~ <sup>36/</sup>

(5) ~~Brakes~~

~~Trailers, semi-trailers, and other vehicles of a gross weight of 1,500 pounds or more, when drawn or pulled upon a highway, must be equipped with brakes adequate to control the movement of and to stop and hold such vehicles, and so designed as to be applied by the driver of the towing vehicle from its cab.~~ <sup>37/</sup> ~~There are exceptions, and the agriculturally related exceptions are (a) Trailers owned by farmers when transporting agricultural products produced on the owner's farm or supplies~~

<sup>33/</sup> Minn. Stat. Ann. § 169.55 (West 1960).

<sup>34/</sup> ~~Id. See note for when lights are required.~~ <sup>Min. Stat. Ann. § 169.48, 55 (West 1960 and Supp. 1977)</sup>

<sup>35/</sup> Minn. Stat. Ann. § 169.55 (West 1960).

<sup>36/</sup> Knutson v. Nielsen, 256 Minn. 506, 99 N.W. 2d 215 (1959). (The last sentence of Minn. Stat. § 169.55(1) prohibits projecting white light to the rear of a moving vehicle. Arguably, this requirement is not applicable to tractors because it is not expressly made so. See first sentence of this section on lights. But Knutson holds contra.); Op. Atty. Gen., 989-A-10, May 13, 1952.

<sup>37/</sup> Minn. Stat. Ann. § 169.67(3) (West Supp. 1977).

back to the farm of the owner of the trailer, ~~the~~ trailers used by retail dealers delivering implements of husbandry, and ~~the~~ tank trailers not exceeding 8,500 pounds gross weight used solely for transporting liquid fertilizer under pressure, or distributor trailers within this same weight used for distributing dry fertilizer when either of these is pulled by a truck equipped with 4-wheel brakes and which can stop within specified distances. <sup>38/</sup> ~~The gross weight of a trailer or semi-trailer described in (a) and (b) cannot exceed 6,000 pounds. <sup>39/</sup>~~

~~(6) Noise Regulation~~

It is unlawful to operate a motor vehicle, <sup>40/</sup> which includes tractors and some implements of husbandry, in violation of motor vehicle noise regulations adopted by the Pollution Control Agency. <sup>41/</sup> ~~For further discussion, see noise pollution under environment, infra.~~

~~(7) Seat Belts~~

Farm tractors, ~~road tractors, <sup>42/</sup> and trucks~~ offered for sale in Minnesota need not be equipped with seat belts. <sup>43/</sup>

*Minn. Stat. Ann. § 169.67(3) (West Supp. 1977)*

<sup>38/</sup> ~~Stopping distances discussed in (5) of this statute (must decelerate at 14 feet per second).~~

<sup>39/</sup> Minn. Stat. Ann. § 169.67(3) (West Supp. 1977).

<sup>40/</sup> "Motor vehicle" means every vehicle which is self-propelled and not deriving its power from overhead wires. Minn. Stat. Ann. § 169.01(3) (West 1960).

<sup>41/</sup> Minn. Stat. Ann. § 169.693 (West Supp. 1977).

<sup>42/</sup> See Minn. Stat. § 169.01(9).

<sup>43/</sup> Minn. Stat. Ann. § 169.685(1) (West Supp. 1977).

(8) ~~Vehicle Width and Length~~

~~It is a misdemeanor to drive or move, or for the owner to cause or knowingly permit to be driven or moved, on any highway any vehicle which exceeds the size or weights limits prescribed by law.~~ <sup>44/</sup> The size, weight, and load restrictions <sup>44/</sup> do not apply to implements of husbandry temporarily moved upon a highway (which means not to exceed 50 miles), or to loads of loose hay or corn stalks drawn by horse or tractor. <sup>45/</sup> ~~For purposes of size, weight, and load restrictions, a specialized vehicle resembling a~~ low-slung, two-wheel trailer having a short bed or platform is ~~deemed~~ an implement of husbandry when it is used exclusively to transport implements of husbandry. <sup>46/</sup>

ok ~~The total outside width of any vehicle or vehicle load cannot exceed 8 feet~~ <sup>ok</sup> ~~except that a farm tractor or a vehicle owned by a political subdivision and used exclusively to transport sewage sludge from sewage treatment facilities to farm fields can have an outside width of up to 12 feet.~~ <sup>47/</sup> A sewage sludge vehicle of this type cannot be operated more than 15 miles from the treatment plant, after sunset and before sunrise, or when visibility is impaired and the vehicle cannot be clearly seen at 500 feet. <sup>48/</sup>

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<sup>44/</sup> Minn. Stat. Ann. § 169.80(1) (West Supp. 1977).

<sup>45/</sup> Id.

<sup>46/</sup> Id.

<sup>47/</sup> Traffic Regulations - Vehicle Width, ch. 150, § 1, 1977 Minn. Sess. Law Serv. (West) (amending Minn. Stat. § 169.80(2) (1976)).

<sup>48/</sup> Id.

A low-bed trailer or equipment dolly used exclusively for transporting farm equipment can have a total outside width of 9 feet, including the load. <sup>49/</sup> However, if it is over 8 feet in width, it cannot travel on any interstate highway without a permit. <sup>50/</sup> Vehicles of this type must display 12-inch square red flags as markers at the front and rear of the left side of the vehicle. <sup>51/</sup>

No vehicle, loaded or unloaded, can exceed a height of 13 feet, 6 inches. <sup>52/</sup> As a general rule, single unit vehicles cannot exceed 40 feet in length, inclusive of bumpers; but any city has the authority to extend this length and prescribe the number of vehicles which may be fastened together for operation upon its streets and highways. <sup>53/</sup>

Subject to certain exceptions, no combination of vehicles coupled together can consist of more than two units or exceed 60 feet in length. <sup>54/</sup> One exception is that vehicles used for transporting milk from point of production to point of first processing can consist of three units, but the overall length must still be 60 feet or less. <sup>55/</sup> The state or any city or town, as to roads within their respective jurisdictions,

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<sup>49/</sup> Id.

<sup>50/</sup> Id. Permit is pursuant to Minn. Stat. § 169.86.

<sup>51/</sup> Id.

<sup>52/</sup> Minn. Stat. Ann. § 169.81(1) (West 1960).

<sup>53/</sup> Minn. Stat. Ann. § 169.81(2) (West Supp. 1977).

<sup>54/</sup> Traffic Regulations - Length of Vehicles and Combinations, ch. 113, § 1, 1977 Minn. Sess. Law Serv. (West) (amending Minn. Stat. § 169.81(3) (1976)).  
Id.

<sup>55/</sup> Id.



may issue permits authorizing the transportation of combinations of vehicles exceeding the limits prescribed.<sup>56/</sup> With certain exceptions son single trailer or semitrailer can exceed 45 feet in length.<sup>57/</sup> One exception is that a trailer which is part of a vehicle designed to transport farm implements may be 50 feet in length, and the load may extend a total of 5 feet (not more than 3 beyond front or 3 feet beyond rear), but the overall length of the vehicle with load cannot exceed 60 feet.<sup>58/</sup>

Motor vehicles operated by a farmer or his agent, when transporting produce the farmer has produced, are exempt from the requirement that no vehicle can be driven or moved on a highway unless it is so constructed, loaded or covered as to prevent the load from dropping, sifting, leaking, or otherwise escaping.<sup>59/</sup>

One section of the law<sup>60/</sup> provides that combinations of vehicles engaged in transporting flax or flax straw for certain purposes can be up to 60 feet in length if a permit is obtained. As noted above, other combinations of vehicles can now be up to 60 feet in length (old length was 55 feet), so it would appear that there is no longer any need to procure such a permit.

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<sup>56/</sup> Id.

<sup>57/</sup> Id.

<sup>58/</sup> Minn. Stat. Ann. § 169.81(3a) (West Supp. 1977).

<sup>59/</sup> Minn. Stat. Ann. § 169.81(5) (West Supp. 1977).

<sup>60/</sup> Minn. Stat. § 169.81(7).

A farm truck,<sup>61/</sup> or a livestock or poultry truck,<sup>62/</sup> any of which is either a single unit or a combination of not more than two units and which otherwise meets the size and weight limits of the law, may draw one additional two-wheel trailer, the load of which does not exceed 3,000 pounds, for the sole purpose of transporting a livestock or poultry loading chute.<sup>63/</sup> The trailer cannot be drawn by a two-unit combination on the public highways beyond a ten mile radius of the home post office of the owner or operator of the combination.<sup>64/</sup> This exception does not apply to the seven county metropolitan area.<sup>65/</sup>

(9) Bumpers

Farm trucks, along with several other vehicles, are exempt from the requirement that all motor vehicles must have front and rear bumpers.<sup>66/</sup>

(10) Tires

Tires with metal studs or other protuberances of material other than rubber cannot be used on the highway.<sup>67/</sup> It is permissible to use farm machinery with tires having protuberances which will not injure the highway and tire chains of reasonable proportions when required for safety.<sup>68/</sup>

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<sup>61/</sup> As defined in Minn. Stat. 168.011(17).

<sup>62/</sup> Owned or operated by a livestock or poultry carrier and used primarily for transporting livestock or poultry for hire. Minn. Stat. Ann. § 169.82(8) (West Supp. 1977).

<sup>63/</sup> Minn. Stat. Ann. § 169.82(8) (West Supp. 1977).

<sup>64/</sup> Id.

<sup>65/</sup> Minn. Stat. Ann. § 169.82(9) (West Supp. 1977).

<sup>66/</sup> Minn. Stat. Ann. § 169.73(2) (West Supp. 1977). Farm trucks are defined by Minn. Stat. § 168.011(17).

<sup>67/</sup> Minn. Stat. Ann. § 169.72(1) (West Supp. 1977).

<sup>68/</sup> Id.

Solid rubber tires must have rubber on the entire surface and must be at least one inch thick.<sup>69/</sup> It is unlawful to operate or move any motor vehicle, trailer or semitrailer having a metal tire in contact with the roadway, except in an emergency.<sup>70/</sup>

The commissioner of highways and local authorities may, within their respective jurisdictions and at their discretion, issue permits authorizing the operation, which would otherwise be prohibited, upon the highways of:

- (a) traction engines,
- (b) tractors having movable tracks with transverse corrugations upon the periphery of such track (or, more colloquially, caterpillars),
- (c) farm tractors, or
- (d) other farm machinery.<sup>71/</sup>

(11) Wheel flaps

Every truck, trailer, semitrailer, pole trailer and rear-end dump truck except rear-end dump farm trucks must be equipped with wheel flaps above and behind the rearmost wheels to minimize the throwing of dirt, water and other materials on vehicles which follow.<sup>72/</sup>

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<sup>69/</sup> Id.

<sup>70/</sup> Id.

<sup>71/</sup> Id.

<sup>72/</sup> Minn. Stat. Ann. § 169.733 (West Supp. 1977).

b. Motor Vehicle Tax.

The state motor vehicle tax is a privilege tax for the use of highways.<sup>1/</sup> Although the United States Supreme Court in Storaasli<sup>2/</sup> did not support the opinion of the Minnesota Supreme Court that the tax is also a property tax, the motor vehicle registration tax does exempt the motor vehicle licensed from other taxation except for wheelage taxes which may be imposed by any city and gross earnings taxes paid by companies subject thereto.<sup>3/</sup>

The first subsection discusses the types of agricultural vehicles exempt from the motor vehicle registration tax. Subsection two discusses the computation of motor vehicle registration tax for farm trucks, the definition of farm trucks, the definition of gross weight, and the tax computation on trucks which are not "farm trucks" but which primarily transport agricultural products.

(1) Vehicles exempt

~~Certain vehicles are exempt from the motor vehicle tax.~~<sup>4/</sup> The  
~~exempt vehicles of significance to agriculture are:~~

- (a) Implements of husbandry<sup>5/</sup> and tractors<sup>6/</sup> solely for agricultural purposes; tractors with trailers or wagons

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<sup>1/</sup> Storaasli v. Minnesota, 283 U.S. 57, 51 S. Ct. 354, 75 L. Ed. 839 (1931).  
<sup>2/</sup> Id.  
<sup>3/</sup> Minn. Stat. Ann. § 168.013(1) (West Supp. 1977).  
<sup>4/</sup> See Minn. Stat. Ann. § 168.012 (West Supp. 1977).  
<sup>5/</sup> "Implements of husbandry not defined in this chapter. See N. 6, p. supra for definition used in ch. 169, Highway Traffic Regulation.  
<sup>6/</sup> "Tractor" is any motor vehicle designed or used for drawing other vehicles but having no provision for carrying loads independently. Minn. Stat. Ann. § 168.011(11) (West 1960). An auto towing another auto is not a tractor for tax purposes. Op. Atty. Gen., 632-E-12, May 25, 1956.

occasionally used to haul agricultural products or necessary commodities to market, and tractors drawing implements of husbandry temporarily moved upon the highway.<sup>7/</sup>

- (b) Farm trailers with a gross weight of less than 10,000 pounds, drawn by a passenger auto<sup>8/</sup> or farm trucks<sup>9/</sup> and used exclusively for transporting agricultural products from farm to farm or to and from the usual market place of the owner.<sup>10/</sup>
- (c) Trailers used exclusively to carry liquid fertilizer for use on a farm.<sup>11/</sup>
- (d) Motor vehicles which are used only for the purpose of carrying barn sprayers or corn shellers permanently attached to them.<sup>12/</sup>

~~The Attorney General has stated that a vehicle mounting a combination portable feed mill and corn sheller is not within the exemption stated in (d) above.~~<sup>13/</sup> ~~A feed grinder permanently attached to a truck is part of the truck and the value of the grinder is included in base price in computing motor vehicle tax; it is only~~ <sup>when a feed</sup> ~~grinder is temporarily attached~~ <sup>to a truck</sup> ~~that it is separately listed and taxed as personalty.~~<sup>14/</sup> But ~~as noted in (d) above~~ <sup>means that</sup> if the truck

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<sup>7/</sup> Minn. Stat. Ann. § 168.012(2) (West 1960).

<sup>8/</sup> "Passenger automobile" is any motor vehicle designed and used for carrying of not more than 8 persons, and includes station wagons but not motorcycles. Minn. Stat. Ann. § 168.011(7) (West 1960).

<sup>9/</sup> "Farm truck" definition discussed in subsection (2) infra.

<sup>10/</sup> Minn. Stat. Ann. § 168.012(2a) (West Supp. 1977).

<sup>11/</sup> Minn. Stat. Ann. § 168.012(2b) (West Supp. 1977).

<sup>12/</sup> Minn. Stat. Ann. § 168.012(5) (West 1960).

<sup>13/</sup> ~~Op. Atty. Gen., 632e-2, January 10, 1961.~~

<sup>14/</sup> Op. Atty. Gen., No. 475, p. 357, 1922.

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~~personally~~ carries a barn sprayer or corn sheller, the truck and all attachments are taxed as personalty and <sup>are</sup> exempt from the motor vehicle tax. If ~~subject to tax as~~ <sup>The</sup> personal property, ~~it is~~ assessed <sup>input is at</sup> ~~at~~ 33 1/3% of <sup>the vehicles</sup> ~~its~~ true value. <sup>15/</sup>

~~(2) Rate of tax~~

~~The computation of the motor vehicle tax is different for different categories of vehicles.~~ <sup>The motor vehicle tax on</sup> ~~on~~ farm trucks ~~the tax~~ is based on total gross weight and is equal to 30% of the base rate prescribed in schedule I for trucks and tractors during each of the first six years of vehicles life (in no event less than \$19); and during the seventh and succeeding years, the rate is the rate is 30% of schedule II (but never less than \$11). <sup>17/</sup>

<sup>15/</sup> Minn. Stat. Ann. § 168.013 (5) (West 1960).

~~<sup>16/</sup> See Minn. Stat. Ann. § 168.013 (West Supp. 1977).~~

<sup>17/</sup> Motor Vehicles—Weight Limits, Ch. 248, § 1, 1977 Minn. Sess. Law Serv. (West) (amending Minn. Stat. § 168.0.3 (1c) (1976). Schedules I and II are from Motor Vehicles—Weight Limits, ch. 248, § 2, 1977 Minn. Sess. Law Serv. (West) (amending Minn. Stat. § 168.013 (1e) (1976)):

Total Gross Weight in Pounds	Schedule I Tax	Schedule II Tax
A 0- 1,500	\$ 5.00	\$ .....
B 1,501- 3,000	9.00	.....
C 3,001- 4,500	14.00	8.00
D 4,501- 6,000	19.00	11.00
E 6,001- 9,000	28.00	17.00
F 9,001-12,000	39.00	23.00
G 12,001-15,000	62.00	37.00
H 15,001-18,000	86.00	52.00
I 18,001-21,000	114.00	68.00
J 21,001-27,000	158.00	95.00
K 27,001-33,000	230.00	138.00
L 33,001-39,000	320.00	192.00
M 39,001-45,000	420.00	252.00
N 45,001-51,000	540.00	324.00
O 51,001-57,000	690.00	414.00
P 57,001-63,000	830.00	498.00
Q 63,001-69,000	970.00	582.00
R 69,001-73,280	1,050.00	630.00
S 73,281-77,000	1,155.00	696.00
T 77,001-81,000	1,260.00	746.00

For each vehicle with a gross weight in excess of 81,000 pounds an additional tax of \$36 is imposed for each ton or fraction thereof in excess of 81,000 pounds, subject to provisions of subdivision 12.

Each semitrailer is separately taxed at \$10 per year or \$50 for five years, whichever the applicant elects.<sup>18/</sup>

A "farm truck" is any single unit truck, truck-tractor, tractor, semitrailer or trailer used by the owner to transport agricultural, horticultural, dairy or other farm products, including livestock, produced or finished by the owner of the truck, or to transport any other personal property owned by the farmer to whom the license for such truck is issued, from farm to market, and to transport property and supplies to the farm of the owner.<sup>19/</sup> Vehicles qualifying and registered as farm trucks may be used by the owner to occasionally transport unprocessed and raw farm products not produced by the owner of the truck from the place of production to market when this constitutes the first haul of such products.<sup>20/</sup> The transporting of corn and peas from a farm to a cannery for the period of the canning season, consisting of 2 to 5 weeks, would be "occasionally" transporting unprocessed and raw farm products within this section.<sup>21</sup>

"Farm trucks" also includes trucks used exclusively to transport milk and cream from farm to assembly point or place of final manufacture, or from assembly point to final place of manufacture.<sup>22/</sup> Such trucks can carry butter, cream, cheese and other dairy supplies for the owner's patrons on its regular return trip.<sup>23/</sup>

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<sup>18/</sup> Motor Vehicles—Weight Limits, ch. 348, § 1, 1977 Minn. Sess. Law Serv. (West) (amending Minn. Stat. § 168.013 (1c) (1976)).

<sup>19/</sup> Minn. Stat. Ann. § 168.011 (17) (West Supp. 1977).

<sup>20/</sup> Id.

<sup>21/</sup> Op. Atty. Gen., 632-E-34, May 26, 1953.

<sup>22/</sup> Minn. Stat. Ann. § 168.011 (17) (West Supp. 1977).

<sup>23/</sup> Id.

One not a farmer is not entitled to registration in the "farm truck" class.<sup>24/</sup> A truck used to haul gravel is not a farm truck even if the gravel pit is surrounded by a farm.<sup>25/</sup>

The separate classification of farm trucks has been held to be valid, and not arbitrary.<sup>26/</sup>

"Gross weight" as applied to a "farm truck" is either the actual weight of the vehicle or "the combined weight of the truck-tractor and semitrailer plus the weight of the maximum load which the applicant has elected to carry on such vehicle or combined vehicles...."<sup>27/</sup> It is not clear from the wording of this statute whether or not the second option is restricted to truck-tractors with semitrailers. The words "...of the truck-tractor and semitrailer..." are used with this second option, while the actual weight option uses the words "...truck, truck-tractor or truck used as a truck-tractor...." This implies that single unit trucks have only the actual weight option. On the other hand, the sentence continues on to say "...on such vehicle or combined vehicles..." (underlining provided), and since a truck-tractor with semitrailer is a combined vehicle the word vehicle may refer to single unit trucks. Alternatively, vehicle could refer to a truck-tractor without a trailer. The gross weight of most vehicles which are not farm trucks is their actual unloaded weight plus the weight of the maximum load they have elected to carry.<sup>28/</sup>

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<sup>24/</sup> Op. Atty. Gen., 632-E-34, August 1, 1949.

<sup>25/</sup> Op. Atty. Gen., 632-A-24, April 27, 1962.

<sup>26/</sup> McReary v. Holm, 166 Minn. 22, 206 N.W. 942 (1926).

<sup>27/</sup> Minn. Stat. Ann. § 168.011 (16) (West Supp. 1977).

<sup>28/</sup> Id.



A vehicle licensed as a farm truck may be rented to any governmental unit for use in snow removal, flood, tornado, fire or other emergency or disaster situation without affecting its license status.<sup>29/</sup>

On all trucks, tractors and truck-tractor and semitrailer combinations, except "farm trucks" and "urban trucks",<sup>30/</sup> the motor vehicle tax is based on the total gross weight, and during the first six years of vehicle life is graduated according to schedule I<sup>31/</sup> (but in no event less than \$28), and in the remaining years is graduated according to schedule II.<sup>32/</sup>

Vehicles (which are not "farm trucks") with a gross weight in excess of 27,000 pounds used for transporting livestock or unprocessed and raw farm products are taxed at 90% of schedule I during the first six years of vehicle life, and 90% of schedule II for remaining years if 60% of the owner's total gross receipts are derived from such agricultural use during the 12 months immediately preceeding registration.<sup>33/</sup> Even if the owner doesn't qualify under this criteria, he can apply to the commissioner of public safety for the reduced tax and the commissioner may determine, after consideration of established facts, that he is eligible for such tax.<sup>34/</sup>

If the owner fails to operate under the limitations set forth for the reduced tax, he must immediately notify the commissioner of public safety of this fact, and pay 1/12 of the difference in motor vehicle

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<sup>29/</sup> Minn. Stat. Ann. § 168.013 (19) (West Supp. 1977).

<sup>30/</sup> For definition of urban trucks, see Motor Vehicles—Weight Limitations, ch. 248, § 2, 1977 Minn. Sess. Law Serv. (West) (amending Minn. Stat. § 168.013 (1e) (1976)).

<sup>31/</sup> See n. 17, *supra*.

<sup>32/</sup> Motor Vehicles—Weight Limits, ch. 248, § 2, 1977 Minn. Sess. Law Serv. (West) (amending Minn. Stat. § 168.013 (1e) (1976)). See n. 17, *supra* for schedule II.

<sup>33/</sup> *Id.*

<sup>34/</sup> *Id.*

tax for each month after operations were discontinued or changed through the end of the registration period.<sup>35/</sup> No reduction or refund is made for a truck registered without reduction which subsequently transports livestock and unprocessed and raw farm products.<sup>36/</sup>

If the owner wishes to operate a truck at a greater gross weight than it is registered for, he can re-register by paying the additional tax due for the remainder of the year.<sup>37/</sup> An owner is permitted one change of registration per year which will result in a refund.<sup>38/</sup>

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<sup>35/</sup> Id.

<sup>36/</sup> Id.

<sup>37/</sup> Motor Vehicles—Weight Limits, ch 248, § 3, 1977 Minn. Sess. Law Serv. (West) (amending Minn. Stat. § 168.013 (12) (1976)).

<sup>38/</sup> Id.

c. Certificate of Title.

Every owner of a vehicle in the state of Minnesota must have a certificate of title, with certain exceptions.<sup>1/</sup> Among the vehicles for which no certificate of title is needed are implements of husbandry and special mobile equipment.<sup>2/</sup> An implement of husbandry, as defined under this section of the law, is any vehicle designed and adapted exclusively for agricultural, horticultural or livestock raising operations or for lifting or carrying an implement of husbandry and in either case not subject to registration if used upon the highways (see subsection (1), supra).<sup>3/</sup> Special mobile equipment includes, among other things, corn shellers and tractors other than truck-tractors, but does not include truck mounted feed grinders or other vehicles designed for the transportation of people or property to which machinery has been attached.<sup>4/</sup>

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1. See Minn. Stat. Ann. § 168A.02 (West Supp. 1977).
  2. Minn. Stat. Ann. § 168A.03 (6), (7) (West Supp. 1977).
  3. Minn. Stat. Ann. § 168A.01 (8) (West Supp. 1977).
  4. Minn. Stat. Ann. § 168A.01 (21) (West Supp. 1977).

d. Exempt From Attachment.

The legislature has authorized the exemption of certain property, up to a specified sum, from judicial process.<sup>1/</sup> This basically means that even if one is sued and loses the lawsuit, the exempt property is protected and cannot be reached by the judgment creditor. Farm machines and implements used in farming operations by a debtor engaged principally in farming, livestock, farm produce and standing crops, up to a value of \$5,000, are not liable to attachment, garnishment or sale on any final process, issued from any court.<sup>2/</sup>

The Minnesota Supreme Court has stated that "the humane and enlightened purpose of an exemption is to protect a debtor and his family against absolute want by allowing them out of his property some reasonable means of support and education and the maintenance of the decencies and proprieties of life."<sup>3/</sup> The legislative purpose in exempting certain property from compulsory process was to adapt the exemptions granted to the circumstances and needs of different classes of debtors.<sup>4/</sup>

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1. See Minn. Stat. Ann. § 550.37 (West Supp. 1977).
  2. Minn. Stat. Ann. § 550.37 (5) (West Supp. 1977).
  3. Poznanovic v. Maki, 209 Minn. 379, 296 N.W. 415 (1941).
  4. Fullerton Lumber Co. v. Carstens, 248 Minn. 254, 80 N.W. 2d 1 (1957).

e. Agricultural Implement Dealerships

This section deals with the responsibility of a company or firm, contracting with a dealership for the sale of farm implements, to repurchase stock of that dealership if the agreement (or franchise) is terminated. Farm implements are vehicles designed or adapted and used exclusively for agricultural operations and only incidentally operated or used upon the highway.<sup>1/</sup>

If a franchised agricultural machinery or implement dealership is discontinued for any reason, the company issuing the franchise must purchase all listed parts in the dealer's stock purchased originally from the company at a price agreeable to the franchised dealer and the company.<sup>2/</sup>

If a person engaged in selling farm implements and repair parts for farm implements enters an agreement whereby the seller agrees with a manufacturer or distributor to maintain a stock of parts or of machines and this contract is later terminated, then the wholesaler or distributor must pay the seller (or credit his account) 100% of the net cost of all current unused complete farm implements, machinery and attachments in new condition which have been purchased by the seller within the 24 months immediately preceeding notification by either party of intent to cancel.<sup>3/</sup> This does not apply if the seller desires, and has a contractual right, to keep such merchandise.<sup>4/</sup> The 100% includes transportation charges which have been paid by the seller or invoiced to seller's account.<sup>5/</sup> The manufacturer or distributor must

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<sup>1/</sup> Minn. Stat. Ann. § 325.635 (6) (West Supp. 1977).

<sup>2/</sup> Minn. Stat. Ann. § 325.63 (West 1966).

<sup>3/</sup> Minn. Stat. Ann. § 325.635 (1) (West Supp. 1977).

<sup>4/</sup> Id.

<sup>5/</sup> Id.

pay 80% of the current net prices on repair parts, including superseded parts listed in current price lists on the date of cancellation, which were purchased from the manufacturer or distributor and are held by (or subsequently received by) the seller on the date of cancellation.<sup>6/</sup> The manufacturer or distributor must also pay the seller a sum equal to 5% of the net price of all parts returned to cover the cost of handling, packing and loading of the parts for shipment back to the manufacturer or distributor unless the manufacturer or distributor elects to inventory, pack and load the parts itself.<sup>7/</sup> Upon payment of amount thus due, title to the implements, machinery, attachments, or repair parts passes to the manufacturer or distributor and they are entitled to possession.<sup>8/</sup> This section does not affect a security interest which the manufacturer or distributor may have had in the item.<sup>9/</sup>

These provisions of the law supplement any agreement between the seller or the manufacturer or distributor covering the return of any of the specified items.<sup>10/</sup> The seller can elect to pursue his contract remedy or the remedy provided by the Law." The manufacturer's or distributor's right to charge back for items originally sold at a discount is not affected by these provisions of the law.<sup>12/</sup> Any repurchase hereunder is not subject to bulk sales law.<sup>13/</sup>

If a dealer, or majority stockholder of a corporation operating a retail dealership, dies the manufacturer or distributor must repurchase the merchandise upon the terms provided by this section.<sup>14/</sup> This does not

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<sup>6/</sup> Id.

<sup>7/</sup> Id.

<sup>8/</sup> Id.

<sup>9/</sup> Id.

<sup>10/</sup> Minn. Stat. Ann. § 325.635 (2) (West Supp. 1977).

<sup>11/</sup> Id.

<sup>12/</sup> Id.

<sup>13/</sup> Id.

<sup>14/</sup> Minn. Stat. Ann. § 325.635 (3) (West Supp. 1977).

apply if the heir or heirs agree to continue to operate the dealership.<sup>15/</sup>

If a manufacturer or distributor fails or refuses to make payment upon a termination, he is liable in a civil action for: (a) 100% of the net cost of the farm implements, machinery and attachments, (b) transportation charges which have been paid by the seller, (c) 80% of the current net price of repair parts, and (d) 5% for handling, packing and loading, if applicable.<sup>16/</sup>

The manufacturer or distributor is not required to repurchase a repair part which the seller previously has failed to return after being given a reasonable opportunity to return it at a price not less than 80% of the net price as listed in the then current price list.<sup>17/</sup> Repurchase of the following items is not required: (a) parts with limited storage life or otherwise subject to deterioration such as rubber items, gaskets and batteries, (b) parts in broken or damaged packages, (c) single repair parts priced as a set of two or more items, and (d) parts which because of their condition are not resalable as new parts without new packaging or reconditioning.<sup>18/</sup>

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<sup>15/</sup> Id.

<sup>16/</sup> Minn. Stat. Ann. § 325.635 (4) (West Supp. 1977).

<sup>17/</sup> Minn. Stat. Ann. § 325.635 (5) (West Supp. 1977).

<sup>18/</sup> Id.

### 3. Harvested Crops

The third division of personal property law addressed by this book is harvested crops. Most of the law in this area deals with the storage of grain. "Grain", which in general terms can be described as the seed of cereal grass, as used in the following sections (except section g which deals exclusively with wild rice) includes flax seed, soybeans, wheat, corn, oats, rye, barley and speltz.<sup>1/</sup>

The first section under this division discusses the supervision of grain marketing and storage. Section b deals with grain banks, which process and return grain to the farmer. Section c deals with the storage of grain on farms. Sections d and e discuss the regulation of local and terminal grain warehouses. As noted earlier, g deals with wild rice. The final section discusses a provision in the law which allows an elevator to get an abstract of liens upon grain.

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1. See Minn. Stat. Ann. § 232.06 (4) (West 1972). The term does not include soybean meal or screenings. Op. Atty. Gen., 645-B-15, December 13, 1955.



- a. Supervision Over Grain. The department of public service has supervision over the grain interests of the state; over the buying, selling, handling and storage of grain; and over the management of public warehouses and public grain markets including chambers of commerce, boards of trade and grain exchanges.<sup>1/</sup> As supervisor of such, it may investigate all cases of fraud and injustice in the grain trade, unfair practices and unfair discrimination in the buying or selling of grain.<sup>2/</sup> It has the power to compel the discontinuance of any such fraud, unfair practice or unfair discrimination.<sup>3/</sup>

The chief purpose in establishing supervision of grain is the prevention of loss to, or practice of fraud upon, persons desiring to store their grain.<sup>4/</sup> One example of such fraud is the Leuthold<sup>5/</sup> case where a warehouseman sold wheat deposited with him without the consent of the owner and accepted in return certain bills of lading in which a certain bank was named as consignee. Although the bank indorsed the bills of lading in blank and sent them on, it was held that because the bank had no knowledge that the warehouseman was wrongfully disposing of property of others, it was not liable to the owners of the wheat in conversion.

Any person who violates any of the provisions of chapters 216 to 235 of the Minnesota Code, relating to railroads, warehouses, utilities, grain and livestock, is guilty of a gross misdemeanor and can be fined from \$50 to \$500.<sup>6/</sup>

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<sup>1/</sup> Minn. Stat. § 235.01 (1976).

<sup>2/</sup> Id.

<sup>3/</sup> Id.; Minn. Stat. §§ 235.10, .18 (1976).

<sup>4/</sup> Op. Atty. Gen., 215-C-8, September 11, 1946.

<sup>5/</sup> Leuthold v. Fairchild, 35 Minn. 99, 27 N.W. 503 (1886).

<sup>6/</sup> Minn. Stat. § 235.13 (1976). Note that the maximum fine is now within the misdemeanor, not gross misdemeanor, category. Crimes -- Felonies -- Misdemeanors, ch. 355, § 4, 1977 Minn. Sess. Law Serv. (West) (amending Minn. Stat. 609.031 (1976)).

The commissioner of agriculture exercises supervision over the inspection, grading, weighing, sampling and analysis of grain in Minnesota.<sup>7/</sup> The Minnesota grain inspection, weighing, sampling and analysis act is discussed in section e, infra.

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<sup>7/</sup> Minn. Stat. § 17B.03 (1) (1976).

b. Grain Banks.

A "grain bank" is a feed-processing plant which receives and stores grain, processes it and returns it to the owner in such amounts, at such intervals and with such added ingredients as are mutually agreed upon by the owner and the person operating the plant.<sup>1/</sup>

(1) Licensing.<sup>2/</sup>

No person can operate a grain bank without a grain bank license. Any person who operates an establishment which processes grain into feed and who is licensed to buy grain as a public or private local grain warehouseman may obtain a license to operate a grain bank. A grain bank license is obtained from the department of public service and is in addition to the license to buy grain.

The fee for a grain bank license is \$25. The license expires on June 30th of each year. A separate license is required for each location where a grain bank is operated. The license is revocable for cause. It must be prominently posted in the grain bank.

Before a license is issued, a \$1500 bond must be posted with the department of public service. This bond must be filed annually to cover the period of the license. The bond runs to the state of Minnesota for the benefit of persons storing grain in the bonded grain bank. The department is authorized to require increases in the amount of bonds if necessary for the protection of grain bank receipt holders. The surety of these bonds must be a corporate surety company authorized to transact business in Minnesota. Any person storing grain in a grain bank may commence an action on the bond.

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<sup>1/</sup> Minn. Stat. § 236.01 (3) (1976).

<sup>2/</sup> Minn. Stat. § 236.02 (1976).

A person granted a grain bank license at more than one location may, if the department of public service approves, file one bond covering all locations in such total amount as the department may require. A person licensed as a public local grain warehouseman, and bonded thereunder, may include his liability under that bond in lieu of securing a separate bond.

(2) Grain Bank Receipt.

A grain bank receipt is a non-negotiable receipt issued to the owner of grain, or his agent, by the grain bank operator.<sup>3/</sup> It must be issued for each delivery of grain to the grain bank.<sup>4/</sup> Each receipt must contain (a) the name and address of the grain bank establishment, (b) the name of the person for whom the grain is delivered to the grain bank, and (c) the kind, quantity and grade of grain which will be redelivered to the owner of the grain.<sup>5/</sup>

(3) Charges<sup>6/</sup>

Grain for which a receipt is issued is stored for processing. Storage charges must be paid by the owner for the period from ten days after delivery until redelivery. Charges are computed and recorded at the time of redelivery. If the grain is not processed or is not sold by the operator, the owner may obtain redelivery of grain of the kind, quantity and grade shown on the receipt if he pays the operator a delivery charge.<sup>7/</sup> This doesn't authorize the storage of grain or the issuance of a grain receipt for grain which was not intended, when

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<sup>3/</sup> Minn. Stat. § 236.01 (4) (1976).

<sup>4/</sup> Minn. Stat. § 236.03 (1976).

<sup>5/</sup> Id.

<sup>6/</sup> Minn. Stat. § 236.04 (1976).

<sup>7/</sup> Delivery charge is as prescribed in Minn. Stat. § 232.06 (1).

received, to be redelivered to the owner as part of a mixed or processed feed within a reasonable time after receipt.

(4) Duties of the Grain Bank Operator.<sup>8/</sup>

The operator of a grain bank must keep all grain storage insured against loss by fire, windstorm and extended coverage risks for the account of the owner, and evidence of this must be furnished the department of public service.

The operator must determine the quantities, kinds and grades of grain received from a depositor, and grain equal in grade must be redelivered to the owner. This does not prohibit commingling of like kinds of grain or the addition to grain of materials used in the lawful formulation of mixed feeds. Where redelivery of grain equal to the grade shown on the receipt cannot be made, through no fault of the grain bank operator, then redelivery of a lesser grade may be made but the operator must pay the owner the difference in market value between the two grades.

The operator of a grain bank must keep separate records for each customer including, but not limited to, charges made and figures which support all balances shown.

The grain on hand at a grain bank must at all times be sufficient to cover all outstanding storage and grain bank receipts balances.

(5) Possessory Lien.<sup>9/</sup>

The grain bank operator has a possessory lien against grain represented by a grain bank receipt for all charges and money owed as a result of receiving, storing, processing and other activities

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<sup>8/</sup> Minn. Stat. § 236.05 (1976).

<sup>9/</sup> Minn. Stat. § 236.06 (1976).

performed as part of the grain bank operation. If this section is inconsistent with the uniform commercial code, this section applies.

(6) Reports.<sup>10/</sup>

The department of public service may require such reports of grain bank operators as is reasonable. No license will be issued to an operator who has failed to make required reports. The department may inspect a grain bank including its property, books, records, accounts, papers and proceedings.

(7) Violations.<sup>11/</sup>

Any person who violates the laws or regulations relating to grain banks is guilty of a misdemeanor. The department may, if it finds that a licensed operator has violated any such law or regulation, suspend or revoke his license. If a license is revoked, no new license will be granted to the person whose license was revoked nor to anyone connected with that particular grain bank for a period of one year.

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<sup>10/</sup> Minn. Stat. § 236.07 (1976).

<sup>11/</sup> Minn. Stat. § 236.09 (1976).

c. Storing Grain on Farms.

The purpose of this section of the law is to provide the owner of grain with a means of warehousing his grain both as a basis for credit and to aid in the marketing of such grain.<sup>1/</sup>

Farm grain storage is supervised by the department of public service and the department is empowered to promulgate rules and regulations to carry out the provisions of the law discussed in the following subsections. This includes such regulation of the construction and maintenance of granaries, cribs, and bins as may be necessary to protect the grain stored therein.<sup>2/</sup>

The department is authorized to appoint local supervisory boards to supervise grain storage.<sup>3/</sup> Such a board will be made up of 3-7 members, all grain producers.<sup>4/</sup> Each board will select such officers, keep such records and perform such duties as the department may prescribe.<sup>5/</sup>

The privilege of storing grain on one's farm is open to all grain owners on the same conditions.<sup>6/</sup>

(1) Sealers and Seals.

The department of public service may, upon either the recommendation of a local board or the request of ten or more producers of grain, appoint a local sealer.<sup>7/</sup> A sealer so appointed, with respect to the laws and regulations governing storing grain on farms, has the same authority as any officer of the peace.<sup>8/</sup>

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<sup>1/</sup> Minn. Stat. § 234.01 (1976).

<sup>2/</sup> Minn. Stat. § 234.03 (1976).

<sup>3/</sup> Minn. Stat. § 234.04 (1976).

<sup>4/</sup> Id.

<sup>5/</sup> Id.

<sup>6/</sup> Minn. Stat. § 234.05 (1976).

<sup>7/</sup> Minn. Stat. § 234.06 (1976).

<sup>8/</sup> Id.

Each sealer must post a performance bond in an amount determined by the department, but in no event less than \$1000.<sup>9/</sup> The bond and sureties thereon are subject to the approval of the department.<sup>10/</sup> The sealer must take an oath similar to that required of public officials.<sup>11/</sup>

The duties of a sealer include:<sup>12/</sup> (a) supervision of the storage of grain, (b) ascertaining the amount stored by each individual who avails himself of the privileges of this section of the law, (c) determining the grade and quantity of grain stored, and (d) ensuring, prior to issuance of any certificate, that the grain storage facility conforms with the regulations of the department. Before delivering a certificate to the grain owner, the sealer must ensure that there is no other certificate outstanding upon the grain, and then seal the storage facility.<sup>13/</sup> He must make periodic inspections no less frequently than at 90-day intervals.<sup>14/</sup>

The sealer has authority to enter upon premises to inspect grain in storage, and the acceptance of a certificate by an owner is deemed consent to such entry.<sup>15/</sup>

Seals used to seal storage facilities will contain the following language:<sup>16/</sup>

"Sealed by authority of the State of Minnesota, Department of Public Service. Any person tampering with this seal or removing any grain herein shall be subject to a fine and imprisonment as provided by law.<sup>17/</sup> Consecutive No....."

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<sup>9/</sup> Minn. Stat. § 234.07 (1976).

<sup>10/</sup> Id.

<sup>11/</sup> Id.

<sup>12/</sup> Minn. Stat. § 234.08 (1976).

<sup>13/</sup> Id.

<sup>14/</sup> Id.

<sup>15/</sup> Minn. Stat. § 234.09 (1976).

<sup>16/</sup> Minn. Stat. § 234.10 (1976).

<sup>17/</sup> See Minn. Stat. §§ 234.23, .25 (1976) (Fine up to \$1000 or 1 year or both).



The owner must pay an amount which cannot exceed 1¢ per bushel to defray the cost of supervision.<sup>18/</sup>

(2) Certificates.

Once the storage facility is sealed, a certificate is issued. This certificate includes, among other things, the date and consecutive number, a description of the grain and of the storage facility (with its location), the name of the owner and certain statements and signatures.<sup>19/</sup>

The owner of the grain is not relieved of his duty to exercise reasonable care in safeguarding the grain in storage by the receipt of this certificate.<sup>20/</sup>

A sealer can issue more than one certificate to the owner, but each certificate must cover a separate facility.<sup>21/</sup> All certificates are made out in quadruplicate (with 3 copies being marked "Duplicate—no value") with the original and one duplicate going to the grain owner and the other two duplicates going to the department.<sup>22/</sup> If the owner negotiates the original, he must also deliver the duplicate to the assignee which the assignee can then fill with the county recorder.<sup>23/</sup>

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<sup>18/</sup> Minn. Stat. § 234.21 (1976).

<sup>19/</sup> Minn. Stat. § 234.11 (1976).

<sup>20/</sup> Minn. Stat. § 234.12 (1976). The standard is that degree of care a reasonably prudent man would exercise with regard to similar property of his own. *Id.*

<sup>21/</sup> Minn. Stat. § 234.13 (1976).

<sup>22/</sup> Minn. Stat. § 234.14 (1976).

<sup>23/</sup> Minn. Stat. § 234.15 (1976). The county recorder will index it as a chattel mortgage. Minn. Stat. § 234.16 (1976). Upon request the recorder will also note a written assignment. Minn. Stat. § 234.17 (1976).

The owner may cancel a certificate by delivering the original to the department of public service, or to a locally appointed board, and requesting that it be cancelled.<sup>24/</sup> The owner must deliver grain on demand by the holder of the certificate, if it is accompanied by an offer to surrender the certificate, unless he has a lawful excuse.<sup>25/</sup> If the owner refuses or fails to deliver on demand, he has the burden of establishing the lawful excuse.<sup>26/</sup>

Issuance of a false certificate is a crime that can result in imprisonment for one year or \$1000 or both.<sup>27/</sup>

All the provisions of article 7 of the uniform commercial code apply, as far as possible, to the certificates issued for farm grain storage.<sup>28/</sup>

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<sup>24/</sup> Minn. Stat. § 234.18 (1976).  
<sup>25/</sup> Minn. Stat. § 234.19 (1976).  
<sup>26/</sup> Minn. Stat. § 234.20 (1976).  
<sup>27/</sup> Minn. Stat. § 234.24 (1976).  
<sup>28/</sup> Minn. Stat. § 234.27 (1976).

d. Local Grain Warehouses.

This section discusses public and private local grain warehouses. Because the applicable law is significantly different, public terminal warehouses are treated separately in the following section of this book.

All elevators, flour, cereal and feed mills, maltheuses and warehouses in which grain belonging to persons other than the warehouseman is received for storage, and which is situated at a location other than Minneapolis, St. Paul or Duluth, is a public local grain warehouse and is under the supervision of the department of public service.<sup>1/</sup> If the grain is received for purchase, it is a private local grain warehouse.<sup>2/</sup> A flour mill, doing mostly an exchange milling business but which also purchases some grain for milling purposes and which is not situated on the right of way of a railway, nor used in connection with a railway, does not come under the provisions of the law governing local grain warehouses.<sup>3/</sup>

(1) Bailment.

Grain delivered to a public local grain warehouse is considered sold to the warehouseman unless arrangements are made prior to or at delivery to apply the grain on contract, for shipment or consignment, or for storage.<sup>4/</sup> But once arrangements are made for storage, even though the grain may be mingled with other grain, or shipped or removed from the original place of sale, the process is considered a bailment and not a sale.<sup>5/</sup> If circumstances under which grain is offered for

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<sup>1/</sup> Minn. Stat. § 232.01 (1) (1976).

<sup>2/</sup> Minn. Stat. § 232.01 (2) (1976).

<sup>3/</sup> Op. Atty. Gen., 190, June 7, 1923.

<sup>4/</sup> Minn. Stat. § 232.17 (1976).

<sup>5/</sup> Minn. Stat. § 235.07 (1976). See Torgerson v. Quinn-Shepherdson Co., 161 Minn. 380, 201 N.W. 615 (1925).

sale by a warehouseman are such as to require a prudent and honest man to inquire as to its ownership, then a buyer is chargeable with constructive notice of the fact that the warehouseman is a bailee of the grain.<sup>6/</sup>

Where different amounts of grain are deposited by different persons with a warehouseman, and the warehouseman commingles and then converts<sup>7/</sup> the grain, each bailor (grain owner-depositor) will recover a pro rata share of what is left.<sup>8/</sup> A warehouseman and a depositor of grain may be tenants in common<sup>9/</sup> of grain stored in a warehouse when the warehouseman puts his own grain in the warehouse or purchases from a depositor, but the interest of the warehouseman is limited to the excess above what is necessary to met his outstanding receipts.<sup>10/</sup>

(2) Licenses.<sup>11/</sup>

The operator of a public or private local grain warehouse must be licensed to buy grain. This license is good for one year, costs \$25 and is issued by the department of public service. The operator of a public local grain warehouse must also be licensed to buy and store grain. This license is also good for one year is issued by the department of public services. The annual fee depends upon the capacity of the warehouse.<sup>12/</sup> This second license is revocable upon notice and hearing. All licenses must be posted in a protected place in the driveway to the warehouse.

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<sup>6/</sup> Christensen v. St. James Farmers Grain Co., 190 Minn. 299, 251 N.W. 686 (1933); see Northern Trust Co. v. Consolidated Elevator Co., 142 Minn. 132, 171 N.W. 265 (1919).

<sup>7/</sup> To "convert" is to appropriate dishonestly.

<sup>8/</sup> Weiland v. Sunwall, 63 Minn. 320, 65 N.W. 628 (1895).

<sup>9/</sup> See Chapter I, § Ala, supra.

<sup>10/</sup> Hall v. Pillsbury, 43 Minn. 33, 44 N.W. 673 (1890).

<sup>11/</sup> Minn. Stat. § 232.02 (1976); Minn. Stat. § 232.12 (1976) also discusses bond requirements.

<sup>12/</sup> Under 100,000 bushel capacity—\$30; 100,000 to 500,000 bushel capacity—\$45; 500,000 or more—\$60. Minn. Stat. § 232.02 (1976).

Any person who wishes to purchase grain for resale must first procure a license (fee \$20) and such a person is subject to the same laws, rules and regulations as local grain warehouseman. Truck grain buyers need a separate license for each truck.

All licensees, including truck licensees, must post a bond.<sup>13/</sup> This bond protects any person dealing with a licensee from loss by reason of any violation of the law governing local grain warehouses. The Minnesota Supreme Court has held that when a warehouseman violates the law during the period of a bond, the surety is liable even if the warehouseman's default is not discovered until after the bonding period.<sup>14/</sup>

The required bond does not cover transactions wherein a voluntary extension of credit beyond the demand date is given on the purchase price by the seller. Anyone damaged by a breach of the conditions of the bond must file their complaint with the department of public service. If the department determines that there is reasonable cause for complaint, it will conduct a hearing on the complaint. It may revoke a license if it has reasonable cause to believe that the licensee has violated the law relating to local grain warehouses. If a bond is insufficient to pay the entire liability to all persons entitled to protection of the bond, it will be apportioned.

This licensing provision of the law does not apply to anyone purchasing grain for his own use or consumption,<sup>15/</sup> and it does not

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<sup>13/</sup> Not less than \$3000 per truck or \$5000 per tractor-trailer unit. Minn. Stat. § 232.02 (3) (1976). For non-truck licensees, the bond must be at least \$1500. Minn. Stat. § 232.12 (1976).

<sup>14/</sup> St. Paul Insurance Co.'sv. Fireman's Fund American Insurance Co.'s, Minn. , 245 N.W. 2d 209 (1976).

<sup>15/</sup> "Use" or "consumption" does not include sale of the grain. Minn. Stat. § 232.02 (8) (1976).

apply to persons buying or selling grain in a chamber of commerce, board of trade or grain exchange.

Anyone operating without a license as required by this section of the law is guilty of a misdemeanor, and each day constitutes a separate offense for which \$50 may be forfeited to the state.<sup>16/</sup>

A flour mill which buys its grain exclusively at grain exchange through licensed commission merchants is not required to have a grain buyer's license<sup>17/</sup> nor are truckers who buy grain out of state and haul it to Minnesota for resale.<sup>18/</sup>

(3) Warehouse Must Be Kept Open.

Minnesota law requires that all public local grain warehouses be kept open for business in order to properly serve the public.<sup>19/</sup> If sufficient cause is shown, the department of public service may allow such a warehouse to close for a period of time.<sup>20/</sup> This requirement is not applicable to flour, cereal and feed mills and malthouses, doing a manufacturing business.<sup>21/</sup>

If a public local grain warehouse is not kept open and does not have permission from the department to close, the person who fails to keep it open is guilty of a misdemeanor.<sup>22/</sup> The department may revoke his license and if it does no reissue will be made to the warehouseman, or anyone connected with him, for a period of up to two years.<sup>23/</sup>

The department of public service must be notified in writing if there is any loss or destruction by fire or other cause of any licensed public local grain warehouse.<sup>24/</sup>

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<sup>16/</sup> Minn. Stat. § 232.02 (9) (1976); Minn. Stat. § 235.09 (1976).

<sup>17/</sup> Op. Atty. Gen., 215-A-4, Sept. 15, 1952.

<sup>18/</sup> Op. Atty. gen., 215-A-4, August 11, 1941.

<sup>19/</sup> Minn. Stat. § 232.03 (1976).

<sup>20/</sup> Id.

<sup>21/</sup> Id.

<sup>22/</sup> Minn. Stat. § 232.04 (1976).

<sup>23/</sup> Id.

<sup>24/</sup> Id.

A license to buy grain will be transferred free of charge upon the sale or lease of any public local grain warehouse if the party selling or leasing first files with the department a report of the business done from the preceding 1st of June until the date of sale or lease.<sup>25/</sup> A license to buy and store grain will be transferred free of charge if the department is satisfied that adequate provision has been made for the purchase, redelivery or continuation of the grain outstanding on storage receipts.<sup>26/</sup>

(4) Inspection and Weighing, Standard Weight.

Grain weighing and inspection is now under the authority of the department of agriculture.<sup>27/</sup> See discussion under section f, *infra*.

The department of public services may, however, inspect any warehouse and its mode of conducting business at any time it considers proper.<sup>28/</sup> The property, books, records, accounts, papers and proceedings of public and private local grain warehouseman are subject to inspection during business hours.<sup>29/</sup>

All entities engaged in the purchase, sale or storage of grain at public local grain warehouses must use the bushel as their standard measure.<sup>30/</sup> The number of pounds which constitute a bushel is provided by law and is the standard weight of the kind of grain in question.<sup>31/</sup>

(5) Receipts.

It is unlawful for a public local grain warehouse to discriminate in the receipts of grain tendered to it if the grain tendered is sound

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<sup>25/</sup> *Id.*  
<sup>26/</sup> *Id.*  
<sup>27/</sup> Minn. Stat. § 232.05 has been repealed. See now Minn. Stat. § 17B.01 et seq.  
<sup>28/</sup> Minn. Stat. § 232.12 (1976).  
<sup>29/</sup> *Id.*  
<sup>30/</sup> Minn. Stat. § 232.10 (1976).  
<sup>31/</sup> *Id.* A bushel of new ear corn cannot exceed 80 pounds during Oct-Nov or 72 pounds during Dec-Jan. *Id.*

and in the warehouseable condition.<sup>32/</sup> When grain is delivered to the warehouse for storage a legal warehouse storage receipt is issued to the grain owner.<sup>33/</sup> This receipt must state: (a) the name of the owner of the grain, (b) the kind and grade of the grain,<sup>34/</sup> and (c) the gross weight, dockage and net weight of the grain as per Minnesota standard weight.<sup>35/</sup>

Charges for receiving, insuring, handling, storing and redelivering grain must be posted in a prominent place in the warehouse and filed with the public service commission.<sup>36/</sup>

Legal warehouse receipts must contain the following contract:<sup>37/</sup>

This grain is received, insured and stored through the date of the expiration of the annual licenses of this warehouse and terms expressed in the body of this receipt shall constitute due notice to the holder thereof of the expiration of the storage period. It shall be and hereby is made unlawful for any person, firm, association or corporation to charge or collect a greater or lesser amount than the one filed with the commission. All charges shall be collected by the warehouseman upon presentation of the storage receipt for the sale or delivery of the grain represented by such receipt, or the termination of the storage period. This grain has been received and stored with grain of the same lawful grade. Upon the return of this receipt and payment or tender of all charges accrued up to the time of said return of this receipt, the above amount, kind and grade of grain will be delivered within the time prescribed by law to the person above named or his order either from this warehouse, or if the owner so desires, from any licensed and bonded warehouse within this state.

An agreement in a receipt not contained in the above contract is void.<sup>38/</sup>

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<sup>32/</sup> Minn. Stat. § 232.06 (1) (1976).

<sup>33/</sup> Id.

<sup>34/</sup> According to official terms established by the Minnesota board of grain standards of by the U.S. secretary of agriculture. Minn. Stat. § 232.06 (1)(1976).

<sup>35/</sup> Minn. Stat. § 232.06 (1) (1976). A form of storage receipt is provided by Minn. Stat. § 232.07.

<sup>36/</sup> Minn. Stat. § 232.06 (1) (1976).

<sup>37/</sup> Id.

<sup>38/</sup> Minn. Stat. § 232.06 (3) (1976).



A receipt record remains with the person issuing the receipt and it is open for inspection by the department of public service or interested parties.<sup>39/</sup> Receipts are consecutively numbered, and show the date of receipt.<sup>40/</sup>

The entity issuing a receipt is liable to the owner for delivery of the kind, grade and net quantity of grain called for by a receipt.<sup>41/</sup> No entity can issue a receipt for grain not actually received into its warehouse.<sup>42/</sup>

Any person who violates the provisions of the laws relating to grain receipt, as they are described above, is guilty of a misdemeanor and can be fined not less than \$50 or put in jail for not less than 30 days.<sup>43/</sup> A one year prohibition on the reissuance of a license accompanies such a revocation.<sup>44/</sup>

When the receipt is surrendered, grain must be immediately delivered to the owner, or to his order, and is not subject to any further charge for storage.<sup>45/</sup> If not delivered within 24 hours, the warehouseman is liable in damages, not exceeding 1¢ per bushel, for each day of delay.<sup>46/</sup> If a dispute arises as to grade and dockage, a 3 quart sample may be taken by either party, and this sample must be certified to by the owner and the warehouseman as a true sample of grain in dispute on the day on which the grain was delivered.<sup>47/</sup> This

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<sup>39/</sup> Minn. Stat. § 232.06 (2) (1976).

<sup>40/</sup> Id.; Minn. Stat. § 235.08 (1976).

<sup>41/</sup> Minn. Stat. § 232.06 (4) (1976).

<sup>42/</sup> Minn. Stat. § 232.06 (6) (1976).

<sup>43/</sup> Minn. Stat. § 232.06 (7) (1976).

<sup>44/</sup> Id.

<sup>45/</sup> Minn. Stat. § 232.08 (1) (1976).

<sup>46/</sup> Id.

<sup>47/</sup> Minn. Stat. § 232.08 (2) (1976).

sample is forwarded to the head of the grain inspection program of the Minnesota department of Agriculture and he will determine the grade and dockage.<sup>48/</sup> For further discussion, see Chapter I, § 3cf(5), *infra*.

The receipt holder and the warehouseman may, but mutual consent, enter into an agreement for renewal of storage.<sup>49/</sup> This requires payment of all legally accrued charges and return of the storage receipt.<sup>50/</sup> A new storage receipt is issued and the old one is canceled.<sup>51/</sup>

(6) Records, Reports.

Public local grain warehouseman must keep a record of all grain received, stored or shipped, stating the weight, grade, dockage and name of the owner.<sup>52/</sup>

Both public and private local grain warehouses must render whatever reports the department of public service may reasonably require.<sup>53/</sup> No license will be issued to a public local grain warehouseman who has failed to make the required reports.<sup>54/</sup> Public local grain warehouseman selling grain must keep an entirely separate account of their grain business which account cannot be mixed under any circumstances, with other accounts.<sup>55/</sup>

(7) Pooling, Discrimination Prohibited.

It is unlawful for a public local grain warehouse to enter in any agreement or understanding with another public local grain warehouse

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<sup>48/</sup> *Id.* A fee is charged for the determination. *Id.*  
<sup>49/</sup> Minn. Stat. § 232.15 (1976).  
<sup>50/</sup> *Id.*  
<sup>51/</sup> *Id.*  
<sup>52/</sup> Minn. Stat. § 232.09 (1976).  
<sup>53/</sup> Minn. Stat. § 232.12 (1976).  
<sup>54/</sup> *Id.*  
<sup>55/</sup> *Id.*

at any railway station whereby the amount of grain to be received or handled is equalized or pooled between the warehouses, the profits or earnings are divided, pooled or apportioned, or the price paid for grain is fixed or affected.<sup>56/</sup> Each day of the continuance of such an agreement, contract or understanding constitutes a separate offense.<sup>57/</sup>

A public local grain warehouse cannot discriminate in the charges made, the services rendered or in the receiving of grain offered for storage.<sup>58/</sup>

(8) Termination of Storage Contract.

Storage contracts terminate on the expiration date of the storage license, and this should be plainly printed on the storage receipt.<sup>59/</sup> Storage may be terminated by the owner at any time by the payment of all legal charges and surrender of the storage receipt together with demand for delivery or sale.<sup>60/</sup> If there is no agreement or demand and the contract has expired, the warehouseman should sell the grain at the local market price on the close of business of the day the contract ends, and the balance over charges should be paid the owner, upon surrender of the storage receipt.<sup>61/</sup>

(9) Scale Tickets.

Upon receipt of grain, a public or private local grain warehouseman must issue a uniform scale ticket.<sup>62/</sup> The ticket must have printed on it that it is non-negotiable and that it does not signify that final

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<sup>56/</sup> Minn. Stat. § 232.11 (1976).

<sup>57/</sup> Id.

<sup>58/</sup> Minn. Stat. § 232.16 (1976).

<sup>59/</sup> Minn. Stat. § 232.14 (1976).

<sup>60/</sup> Id.

<sup>61/</sup> Id.

<sup>62/</sup> Minn. Stat. § 232.18 (1976). The tickets must be consecutively numbered, one carbon remains with the warehouseman and the original goes to the person from whom grain is received. Id.

settlement has been reached.<sup>63/</sup> The ticket must state whether the grain is received on contract, for storage, for shipment or consignment, or sold.<sup>64/</sup> If the grain is received on contract, the price must be indicated on the ticket.<sup>65/</sup>

(10) Penalties.

Any violation of the provisions of the laws relating to local grain warehouses is a misdemeanor.<sup>66/</sup> The department of public service may, after a hearing, revoke or suspend any license it has issued relating to local grain warehousing, and if a license is revoked, no new license will be granted to the person whose license was revoked, or to anyone directly or indirectly engaged with him in the licensed business, for a period of one year.<sup>67/</sup>

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<sup>63/</sup> Minn. Stat. § 232.18 (1976).

<sup>64/</sup> Id.

<sup>65/</sup> Id.

<sup>66/</sup> Minn. Stat. § 232.19 (1976).

<sup>67/</sup> Id.

e. Public Terminal Warehouses. This section deals exclusively with public terminal warehouses. Public terminal warehouses are elevators or warehouses located within the switching limits of St. Paul, Minneapolis and Duluth (and other points which may in the future be designated terminal points) in which grain not belonging to the warehouseman is received for storage, whether for hire or without charge.<sup>1/</sup> Public terminal warehouses include warehouses where grain is stored for different owners and the identity of different parcels is not preserved or where grain is stored in separate bins and the identity preserved.<sup>2/</sup>

The provisions of sections 233.03, 104, .06 and .09 (the latter two only in so far as they relate to grade and dockage) of the Minnesota Code do not apply to warehouses operated exclusively for cleaning, drying, cooling, mixing and conditioning grain belonging to others for market as long as such grain is stored separately and no grain belonging to the warehouseman is received, handled or stored.<sup>3/</sup>

The department of public services has rule making authority in matters relating to public terminal warehouses.<sup>4/</sup>

As with local grain warehouses, a deposit of grain for storage is a bailment and the warehouseman may be a tenant in common with depositors of grain. For further discussion and appropriate citations, see bailment under local grain warehouses, supra.

(1) Duties of Warehouseman.

All warehouseman must receive for storage and shipment, if capacity permits, all grain suitable for storage which is tendered to

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<sup>1/</sup> Minn. Stat. § 233.01 (3) (1976).

<sup>2/</sup> Id.

<sup>3/</sup> Id.

<sup>4/</sup> Minn. stat. § 233.02 (1976).

them in the usual course of business, without discrimination of any kind.<sup>5/</sup> The grain must be inspected upon receipt and stored with other grain of the same grade.<sup>6/</sup>

At the time of delivery, the warehouseman must issue the owner a warehouse receipt.<sup>7/</sup> Failure to issue a receipt or issuance of a receipt differing in form or language from that prescribed<sup>8/</sup> is a misdemeanor.<sup>9/</sup>

A warehouseman cannot sell or deliver out of store any grain stored in his warehouse without the express authority of its owner and the return of the storage receipt.<sup>10/</sup> The sale of grain with the receipt holder's consent gives good title but consent may not be inferred from custom.<sup>11/</sup> No agreement or understanding can be entered into between a public warehouseman and a common carrier for the delivery of grain contrary to the direction of the owner.<sup>12/</sup> The owner of grain consigned to a terminal warehouse can have it withheld from storage and delivery by giving notice to the carrier in possession, and to the warehouseman to whom it was consigned, and paying all charges that may be a lien on the grain.<sup>13/</sup>

A warehouseman cannot mix together grains of different grades nor can he select grain of different qualities (even if the same grade) for

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<sup>5/</sup> Minn. Stat. § 233.03 (1976).  
<sup>6/</sup> Id.  
<sup>7/</sup> Id.  
<sup>8/</sup> Sample of form prescribed is provided in Minn. Stat. § 233.03.  
<sup>9/</sup> Minn. Stat. § 233.03 (1976).  
<sup>10/</sup> Minn. Stat. § 233.05 (1976).  
<sup>11/</sup> Nieter v. McCaull-Dinsmore Co., 159 Minn. 395, 199 N.W. 85 (1924).  
<sup>12/</sup> Minn. Stat. § 233.23 (1976).  
<sup>13/</sup> Minn. Stat. § 233.22 (1976).

storage or delivery.<sup>14/</sup> He cannot tamper with grain of others in his possession with the purpose of securing a profit for himself, or attempt to deliver grain of one grade for that of another.<sup>15/</sup> Any person violating the provisions described in this paragraph can be fined \$1000, imprisoned 5 years, or both.<sup>16/</sup>

Every warehouseman operating a public terminal warehouse shall annually publish, during the first week in July, in a newspaper (daily if there is one in the place where his warehouse is located) a schedule of storage rates for the coming year and these rates cannot be increased during that year.<sup>17/</sup> No discrimination in rates is allowable.<sup>18/</sup> The charges for receiving, handling and delivering grain and for storing grain are fixed by the department of public services.<sup>19/</sup>

Every terminal warehouseman must conspicuously post, by Tuesday morning of each week, a statement of the amount of grain of each kind and grade in his warehouse at the close of business on the preceding Saturday, and a copy must be provided the warehouse registrar of the department of public services.<sup>20/</sup> He must also make daily statements to the registrar concerning grain received, grain shipped, etc.<sup>21/</sup>

(2) License.

A public terminal warehouse cannot be operated until it has received a license from the department of public services.<sup>22/</sup> The

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<sup>14/</sup> Minn. stat. § 233.05 (1976).  
<sup>15/</sup> Id.  
<sup>16/</sup> Id.  
<sup>17/</sup> Minn. Stat. § 233.10 (1976).  
<sup>18/</sup> Id.  
<sup>19/</sup> Id.  
<sup>20/</sup> Minn. Stat. § 233.09 (1976).  
<sup>21/</sup> Id.  
<sup>22/</sup> Minn. Stat. § 233.08 (1976).

license application requires certain information about the nature of the warehouse plus a \$50 fee and a bond of not less than \$50,000.<sup>23/</sup> This license may be revoked, but only after a hearing with written notice.<sup>24/</sup>

(3) Inspection.

All grain received at a terminal warehouse must be inspected and graded by an inspector licensed by the United States department of agriculture<sup>25/</sup> at the time of receipt if it has not previously been inspected by an inspector so licensed.<sup>26/</sup> For discussion of grain inspection, see section f, infra.

Every person having an interest in stored grain, and every state grain inspector, has the right to examine, during ordinary business hours, any grain stored in any part of the warehouse.<sup>27/</sup> The warehouseman must furnish proper facilities for such an examination.<sup>28/</sup>

The scales in public terminal warehouses, and those used in weighing grain in railroad yards at terminal points, are under the control of, and subject to inspection by, the department of public services and not the division of weights and measures.<sup>29/</sup> They will be inspected at the request of any person interested in any grain weighed thereon, and if found incorrect, the cost of inspection is paid for by the owner; otherwise by the person requesting the inspection.<sup>30/</sup>

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<sup>23/</sup> Id.

<sup>24/</sup> Id.

<sup>25/</sup> Under the provisions of the U.S. grain standards act.

<sup>26/</sup> Minn. Stat. § 233.07 (1976). No inspection is required grain moved between elevators owed or operated by the same person. Id.

<sup>27/</sup> Minn. Stat. § 233.11 (1976).

<sup>28/</sup> Id.

<sup>29/</sup> Minn. Stat. § 233.24 (1976).

<sup>30/</sup> Id.



(4) Separate Bins.

At the request of the owner, the warehouseman will store any grain of the owner in separate bins.<sup>31/</sup> A warehouse receipt is issued for such grain and this receipt must contain the name of the owner, the the amount, kind and grade of grain and that the grain is stored separately. Upon surrender of a properly endorsed receipt, the warehouseman must issue the amount of grain demanded.<sup>32/</sup>

If the grain is not stored in separate bins, grain of the same grade and quantity as the receipt must be delivered to the receipt holder within 24 hours.<sup>33/</sup> If stored in separate bins, the identical grain must be delivered.<sup>34/</sup> If the warehouseman fails to deliver, he is liable to the owner for 1¢ per bushel for each day's delay unless he is delivering the property to the several owners in order of demand as rapidly as can be done by ordinary diligence.<sup>35/</sup> Upon failure of delivery the owner may recover the same grain if kept in separate bins, or the same amount in like grade if stored with other grain, in a civil action and the warehouseman is guilty of theft.<sup>36/</sup>

(5) Protection of Grain.

All railroad companies, warehousemen and millers operating at terminal points must provide police protection at their terminal yards and on their terminal tracks to protect all cars in their possession which contain grain.<sup>37/</sup> They must prohibit and restrain all unauthorized persons from entering or loitering in or about their respective

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<sup>31/</sup> Minn. Stat. § 233.06 (1976).

<sup>32/</sup> Id.

<sup>33/</sup> Minn. Stat. § 233.04 (1976).

<sup>34/</sup> Id.

<sup>35/</sup> Id.

<sup>36/</sup> Id.

<sup>37/</sup> Minn. Stat. § 233.33 (1976).

yards and from entering any cars of grain under their control.<sup>38/</sup> Any  
railroad company, warehouseman or miller who fails to comply with this  
provision of the law and any unauthorized person who removes grain  
from a car before it is unloaded is guilty of a misdemeanor.<sup>39/</sup>

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38/ Id.  
39/ Id.

f. Grain Inspection.

This section is a brief outline of the Minnesota grain inspection, weighing, sampling, and analysis act which became law in 1974. As was noted earlier, the Commissioner of Agriculture exercises supervision over the inspection, grading, weighing, sampling, and analysis of grain within the State of Minnesota, subject to the provisions of the United States Grain Standards Act of 1976 the rules promulgated thereunder by the USDA. <sup>1/</sup> To fulfill these duties, the Commissioner of Agriculture is empowered to promulgate rules and regulations necessary to carry out the provisions of this act. <sup>2/</sup>

Many of the duties of the Commissioner of Agriculture under the grain inspection act previously belonged to the Department of Public Services.

(1) Board of Grain Standards.

The Minnesota grain inspection act created a board of grain standards. <sup>3/</sup> This board has jurisdiction over all grain standards established in Minnesota and consists of the head of the grain inspection program and two of his assistants selected by the Commission of Agriculture. <sup>4/</sup>

The Minnesota Board of Grain Standards, as it is officially referred to, meets annually on or before June 15 and establishes grades for all grain subject to state inspection. <sup>5/</sup> The board is empowered to pass rules and regulations necessary to establish grain standards. <sup>6/</sup>

In establishing grades, the board takes into consideration the physical qualities of the grain, and the milling and bread-producing quality of all grain products used as human food. <sup>7/</sup> Foreign content

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<sup>1/</sup> Act of March 28, 1978, ch. 610, § 1, 1978 Minn. Sess. Law Serv. (West), amending Minn. Stat. § 17B.03(1) (1976).

<sup>2/</sup> Minn. Stat. § 17B.28 (1976).

<sup>3/</sup> Minn. Stat. § 17B.06 (1976).

<sup>4/</sup> Id.

<sup>5/</sup> Minn. Stat. § 17B.07 (1976).

<sup>6/</sup> Id.

<sup>7/</sup> Id.

is not considered in establishing grade. <sup>8/</sup> The board must determine what dockage contained in grain is of value and publish a list of this in connection with the publication of Minnesota grades. <sup>9/</sup>

The board also determines the grade and dockage of grain in cases where appeal from the decision of the chief inspector is taken. <sup>10/</sup>

(2) Inspection and Weighing.

The grain inspection act provides that the Commissioner of Agriculture may inspect and weigh grain at any point in the state, upon proper application by any interested person, if the Commissioner deems it expedient, and provided that the person requesting such services agrees to pay all of the costs. <sup>11/</sup> The Commissioner shall inspect and grade all grain received at any terminal warehouse when requested to do so by any person having a financial interest in such grain (e.g., owner, seller, purchaser, warehouseman, or carrier). <sup>12/</sup> He will also provide inspection service for interhouse transfers or when grain is "run for grade" within a house if requested by a warehouseman. <sup>13/</sup>

Every shipper of grain must fasten, to the inside of each car shipped, a card giving the number and initials or other distinctive marks of such car, the date of shipment, and the exact weight shall be prima facie evidence of the quantity of grain shipped in such car. <sup>15/</sup>

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<sup>8/</sup> Id.  
<sup>9/</sup> Id.  
<sup>10/</sup> Id.  
<sup>11/</sup> Act of March 28, 1978, ch. 610, § 2, 1978 Minn. Sess. Law Serv. (West), amending Minn. Stat. § 17B.04(1) (1976).  
<sup>12/</sup> Minn. Stat. § 17B.11 (1976).  
<sup>13/</sup> Id.  
<sup>14/</sup> Minn. Stat. § 17B.04(2) (1976).  
<sup>15/</sup> Id.

Any interested person who is dissatisfied with the inspection of grain may appeal to the board of grain supervisors by filing notice with the commissioner and paying a fee, which is refunded if the appeal is sustained.<sup>16/</sup> The decision of the board is final.<sup>17/</sup>

The fees for inspection and weighing are fixed by the commissioner and become a lien upon the grain.<sup>18/</sup> If the grain is in transit, the fees must be paid by the carrier and become advance charges; if received for storage, the fees are paid by the warehouseman and are added to storage costs.<sup>19/</sup>

The commissioner reviews the inspection fee schedule each April and October.<sup>20/</sup> He adjusts fees if they are not 100%, or exceed 110%, of expenditures for salaries (which include overtime, state retirement and social security contributions) for the two-year period ending December or June prior to review.<sup>21/</sup> The adjustments take effect the first of January or July following the review.<sup>22/</sup>

The fee schedule will provide any business requesting a weighing or inspection must pay a minimum charge per hour for each employee assigned and any fees earned by the employee are credited against the charge made.<sup>23/</sup>

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<sup>16/</sup> Minn. stat. § 17B.12 (1976).

<sup>17/</sup> Id.

<sup>18/</sup> Minn. Stat. § 17B.15 (1) (1976).

<sup>19/</sup> Id.

<sup>20/</sup> Grain Inspection - Fees, Ch. 296, § 1, 1977 Minn. Sess. Law serv. West) (amending Minn. Stat. § 17B.15(2) (1976)).

<sup>21/</sup> Id.

<sup>22/</sup> Id.

<sup>23/</sup> Id.

Until recently, the persons involved with the inspection <sup>24/</sup> and weighing <sup>25/</sup> of grain in Minnesota were required to be bonded. The legislature in 1979 abolished the bonding requirements for weighers and inspectors, including the head of the grain inspection program. <sup>26/</sup>

The Commissioner of Agriculture appoints, at each designated export terminal point, weighers who control the weighing of all grain received at or shipped from each terminal, except when the shipment is specifically exempted by the administrator of the federal grain inspection service. <sup>27/</sup> Each weigher is required to put up a \$5,000 bond for the faithful discharge of his duty. <sup>28/</sup>

Each weigher is required to keep certain records as prescribed by the Commissioner, and he must furnish a certificate, containing certain prescribed information, to the person for whom the weighing is being done. <sup>29/</sup> Any warehouse operator is entitled to the official certificate of inspection and the weighing certificate for any grain or commodity shipped from his warehouse, and inspected or weighed as provided by law. <sup>30/</sup> A warehouseman receiving either of these certificates must pass one copy on to the buyer, and the buyer must keep this copy available for examination for 30 days. <sup>31/</sup>

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<sup>24/</sup> Minn. Stat. § 17B.08 and .09 (1978).

<sup>25/</sup> Id. § 17B.13 .

<sup>26/</sup> Act of May 3, 1979, Ch. 68, §§ 1, 6, 1979 Minn. Sess. Law Serv. 98-100 (West).

<sup>27/</sup> Act of March 28, 1978, ch. 610, § 3, 1978 Minn. Sess. Law Serv. (West), amending Minn. Stat. § 17B.13 (1976).

<sup>28/</sup> Id.

<sup>29/</sup> Minn. Stat. § 17B.14(1) (1976).

<sup>30/</sup> Minn. Stat. § 17B.14(2) (1976).

<sup>31/</sup> Minn. Stat. § 17B.14(3) (1976).

(4) Alfalfa, Sweet Clover, Red Clover and Grass Seeds.

Alfalfa seed, sweet clover seed, red clover seed and all grass seeds grown in commercial quantities within the state are subject to the provisions of the laws which regulate the establishment of grades and grading.<sup>32/</sup> The commissioner may determine, with or without a public hearing, whether any of these seeds are being produced in sufficient quantity and under conditions which permit practical grading and inspection.<sup>33/</sup> He may defer such grading and inspecting until it becomes of substantial public benefit.<sup>34/</sup> Fees for grading and inspecting this type of seed are assessed and collected in the same manner as with other grains, but they may be set so as to cover the full cost of all grading and inspecting done to such seed.<sup>35/</sup>

(5) Disputes Over Grades or Dockage.<sup>36/</sup>

If a disagreement arises between the person receiving and the person delivering grain as to the proper grade and dockage, a 3 quart sample of the grain may be taken by either party. It must then be certified by both the owner and receiver as a true sample of the grain in dispute on the day upon which the grain was delivered. This sample is forwarded to the head of the grain inspection program of the Minnesota department of agriculture who will examine it and adjudge the grade and dockage. The requesting party must pay the required fee before the results of inspection are released.

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<sup>32/</sup> Minn. Stat. § 17B.23 (1976).

<sup>33/</sup> Minn. Stat. § 17B.24 (1976).

<sup>34/</sup> Id.

<sup>35/</sup> Minn. stat. § 17B.25 (1976).

<sup>36/</sup> Minn. Stat. § 17B.05 (1976); see Minn. stat. § 232.08 (2) (1976).

(6) Standard Samples.

The commissioner of agriculture will furnish standard samples of grain of each grade to any grain warehouseman in the state upon request and payment of the actual cost involved.<sup>37/</sup>

(7) Proscriptions and Penalties.

No inspector, sampler or weigher can be, during his term of office, (a) interested in the handling, storing, shipping, purchasing or selling of grain or any of its products, (b) in the employment of any person engaged in such a business, or (c) a member of any board of trade or organization of similar character.<sup>38/</sup>

In addition, the grain inspection act provides for a number of different penalties for different acts. The commissioner of agriculture investigates any charge that an inspector, sampler or weigher is guilty of official misconduct, inefficiency, incompetency or neglect of duty, and if he finds that charge sustained, he may dismiss the employee.<sup>39/</sup>

Any employee who (a) knowingly or carelessly improperly inspects or weighs grain, (b) gives false certification of inspection or weights, (c) accepts money or other consideration, either directly or indirectly, for neglect or improper performance, or (d) neglects his duty, and any person who improperly influences, or attempts to influence, any officer in the performance of his duty, is guilty of a gross misdemeanor.<sup>40/</sup> Any person who is not duly appointed and qualified and who acts as if he were a state inspector of grain is guilty of a misdemeanor.<sup>41/</sup>

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<sup>37/</sup> Minn. Stat. § 17B.10 (1976).

<sup>38/</sup> Minn. Stat. § 17B.16 (1976).

<sup>39/</sup> Minn. Stat. § 17B.17 (1976).

<sup>40/</sup> Minn. Stat. § 17B.22 (2) (1976).

<sup>41/</sup> Minn. Stat. § 17B.22 (1) (1976).



Any person who obstructs a state weigher in the performance of his official duties, by preventing his access to scales used in weighing grain or otherwise, is guilty of a misdemeanor.<sup>42/</sup> Any warehouseman who fails to provide the buyer a copy of the certificate of weight or inspection within ten days after he has received it is guilty of a misdemeanor.<sup>43/</sup>

It is unlawful for anyone other than employees of the department of agriculture or the owner of grain to knowingly break the seal of any car of grain subject to state inspection.<sup>44/</sup> Any person who so breaks a seal is guilty of a misdemeanor.<sup>45/</sup> When grain cars arrive at terminal points, agriculture department employees determine whether any leakage has occurred and whether the doors were properly secured and sealed.<sup>46/</sup>

Any person who sells, or offers for sale or for shipment, any barley or other grain which has been subjected to fumigation, other treatment by sulphur or to other chemical process which affects the color of the grain, can be fined \$500, imprisoned for 1 year, or both and is liable in treble damages.<sup>47/</sup> Barley and oats may be so treated, but only pursuant to regulations prescribed by the commissioner and only if marketed as "purified barley" or "purified oats".<sup>48/</sup>

Any person who violates any provision of the grain inspection act where no specific penalty is prescribed is guilty of a gross misdemeanor.<sup>49/</sup>

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<sup>42/</sup> Minn. Stat. § 17B. 18 (1976).  
<sup>43/</sup> Minn. Stat. § 17B. 14 (4) (1976).  
<sup>44/</sup> Minn. Stat. § 17B.20 (1) (1976).  
<sup>45/</sup> Minn. Stat. § 17B.20 (2) (1976).  
<sup>46/</sup> Minn. Stat. § 17B.20 (3) (1976).  
<sup>47/</sup> Minn. Stat. § 17B.27 (1976).  
<sup>48/</sup> Id.  
<sup>49/</sup> Minn. Stat. § 17B.28 (1976).

g. Wild Rice. The wild rice crop of the waters of Minnesota is important to the sustenance of native americans in the state.<sup>1/</sup> For this reason, wild rice harvesting upon public waters in the state is strictly regulated and native americans have the exclusive right to harvest wild rice within the original boundaries of specified reservations? Harvesting within these reservations is restricted to persons of Indian blood or residents of the reservation upon which the wild rice is taken.<sup>3/</sup> The Attorney General has ruled that when a reservation is expanded for certain election purposes, this does not qualify non-Indian residents of the expansion area to harvest wild rice within the original boundaries of the reservation.<sup>4/</sup>

In harvesting wild rice, it is unlawful to:<sup>5/</sup>

- (a) use watercraft except for a boat, shiff or canoe propelled by hand and such watercraft cannot have a top width of more than 36 inches or a length of more than 18 feet,
- (b) use any machine or mechanical device for gathering the rice other than with flails not over 30 inches in length nor over 1 pound in weight and such flails must be operated by hand,
- (c) use a pole for propelling watercraft used in harvesting unless the pole is forked at the end and each branch is less than 12 inches in length,
- (d) harvest wild rice on public waters between 3 o'clock p.m. and 9 a.m. (unless authorized).

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<sup>1/</sup> See Minn. Stat. § 84.09 (1976).

<sup>2/</sup> Minn. Stat. § 84.09 (1976).

<sup>3/</sup> Minn. Stat. § 84.10 (1976).

<sup>4/</sup> Op. Atty. gen., 211d-18, August 27, 1969.

<sup>5/</sup> Minn. Stat. § 84.111 (1976).

The commissioner of natural resources may appoint a person of proven experience in cultivation and harvesting of wild rice as director of the wild rice harvest, and he may establish rules for the harvesting of wild rice as well as days and hours of such harvest.<sup>6/</sup> Wild rice beds will be closed to harvesting when the director of wild rice finds that such is necessary to reseed and restock the bed.<sup>7/</sup> The commissioner may also close designated public waters to harvesting if harvesting endangers the effective use of wild rice as a natural food for water fowl.<sup>8/</sup>

The commissioner may harvest up to 10,000 pounds of wild rice from any public waters within the state, including reservation waters, for the purpose of obtaining wild rice seed for experimentation and for replanting in public waters.<sup>9/</sup>

Additional areas of regulation of wild rice include permits and licensing,<sup>10/</sup> confiscation of equipment,<sup>11/</sup> disposition of fines collected,<sup>12/</sup> and state ownership of wild rice.<sup>13/</sup>

The Minnesota legislature recently declared wild rice (or zizania aquatica) the state grain of the state of Minnesota.<sup>14/</sup>

<sup>6/</sup> Minn. Stat. § 84.14 (1976).

<sup>7/</sup> See Minn. Stat. § 84.14 (4) (1976).

<sup>8/</sup> Minn. Stat. § 84.15 (1976).

<sup>9/</sup> Id.

<sup>10/</sup> Minn. Stat. § 98.48, .50 (1976).

<sup>11/</sup> Minn. Stat. § 97.50 (1976).

<sup>12/</sup> Minn. Stat. § 97.49 (1976).

<sup>13/</sup> Minn. Stat. § 97.42 (1976).

<sup>14/</sup> Wild Rice-State Grain, ch. 348, § 1977 Minn. Sess. Law Serv. (West) (to be incorporated as Minn. Stat. § 1.148).

- h. Abstract of Liens Upon Grain. This section briefly describes a provision of the law which allows an elevator to acquire an abstract of liens upon grain.

Any elevator doing business within the state may annually make written application to the county recorder for an abstract of all designated mortgages and liens upon grain grown during the year within the county.<sup>1/</sup> The application must state the name and address of the elevator and be accompanied by a \$5 advance for fees.<sup>2/</sup> The recorder will receive 15¢ for each instrument abstracted, and at the end of the year may deduct his fees earned from the deposit and return the surplus.<sup>3/</sup>

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<sup>1/</sup> Minn. Stat. § 386.42 (1976).

<sup>2/</sup> Id.

<sup>3/</sup> Id.

### C. Labor Law

Farming and other agricultural pursuits invariably involve a great deal of labor. Labor, as used in this topic, includes not only the personal services and work of a hired employee or independent contractor, but also the efforts of the farmers immediate family and exchange labor with neighboring farmers. The law recognized that much of the work done on a farm is done by the farmer's family, and as a general rule, the law does not require the farmer to treat his family as he is required to treat other employees. For example, a member of a farmer's family is not counted as an employee in determining whether that farmer is required to pay workers' compensation.<sup>1/</sup>

Labor law can be immensely complex when one considers the federal statutes and regulations along with the state statutes and regulations. As with the rest of this book, this topic will focus on agriculturally significant state law, with references to applicable federal law. The different topics discussed are child labor, the minimum wage, workmen's compensation, unemployment compensation, health and safety (Mosha), labor relations, insurance for migrant workers, custom operator's lien and the use of inmate in agricultural labor on state owned land.

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<sup>1/</sup> See Act of April 4, 1978, ch. 722, § 1, 1978 Minn. Sess. Law Serv. (West), amending Minn. Stat. § 176.041(1) (1976).

1. Child Labor

The law places certain restrictions on the use of children as laborers. This section discusses the Child Labor Standard Act<sup>1/</sup> and its implications on agricultural labor law.

The purpose of the Minnesota child labor act is to aid in the development of young people through employment, but the work, however, must be coordinated with school and safety considerations in order to serve the best interests of the young.<sup>2/</sup>

The act states that, with certain exceptions, no child under age 14 is permitted employment.<sup>3/</sup> An exception is granted to children 12 years of age or older who may be employed in corn detasseling operations and other agricultural operations if they have the permission of their parent or guardian).<sup>4/</sup> A minor employed by his parents is also excepted because such a child is exempt from all of the requirements of the child labor act.<sup>5/</sup>

The act also provides that no minor under the age of 16 is permitted to work:<sup>6/</sup> (a) during school hours on school days unless he has an employment certificate? (b) before 7 a.m. or after 9:30 p.m., or (c) more than 40 hours per week or more than 8 hours in any 24 hour period. Any minor employed in corn detasseling and other agricultural operations with the permission of his parent or guardian is exempt from the 40 hours per week, 8 hours per day limitation.<sup>8/</sup>

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<sup>1/</sup> Minn. Stat. §§ 181A.01-.12 (1976).

<sup>2/</sup> Minn. Stat. § 181A.02 (1976).

<sup>3/</sup> Minn. Stat. § 181A.04 (1) (1976).

<sup>4/</sup> Minn. Stat. § 181A.07 (1) (1976).

<sup>5/</sup> Minn. Stat. § 181A.07 (4) (1976).

<sup>6/</sup> Minn. Stat. § 181A.04 (2), (3), (4) (1976).

<sup>7/</sup> Minn. Stat. § 181A.05 (1976).

<sup>8/</sup> Minn. Stat. § 181A.07 (1) (1976).

The child labor act further states that no minor under 18 years of age is permitted to work in any occupation which the commissioner of the state department of labor and industry finds to be particularly hazardous or detrimental to the well being of children under 18 years old.<sup>9/</sup> The Department of Labor and Industry has published a list<sup>10/</sup> of jobs which persons 18 and under are prohibited from working in, but none of the jobs listed are agricultural. The department has, however, promulgated a regulation which prohibits those 16 and under from being employed to operate or assist in operating farm tractors and other self-propelled vehicles unless trained by the 4-H Extension Service or the U.S. Office of Education Vocational Agriculture Training.<sup>11/</sup> This regulation also prohibits the employment of those under 16 in any occupation in agriculture that the U.S. Secretary of Labor declares hazardous for the employment of children below the age of sixteen.<sup>12/</sup>

But nothing in the act prohibits a person from employing a child in any agricultural pursuit permitted under 29 U.S.C. § 213 (c) (2).<sup>13/</sup>

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<sup>9/</sup> Minn. Stat. § 181A.04 (5) (1976). The Minnesota Supreme Court declared this statute applied to employment of children in agricultural pursuits. *State Farm Mutual Automobile Insurance Co. v. Hilk*, 296 Minn. 8, 206 N.W. 2d 360 (1973). The legislature responded by passing Minn. Stat. § 181A.11. Pedersen, *The Changing Legal Status of Minnesota Farm Workers*, 2 Wm. Mitchell L. Rev 53 (1976) at 70. Minn. Stat. § 182.09, dealing with occupational safety and health, also exempts from its description of hazardous occupations agricultural pursuits permitted under 29 U.S.C. § 213 (c) (2).

<sup>10/</sup> See Minn. Reg CLS 11 (volume 11).

<sup>11/</sup> Minn. Reg CLS 15 (volume 11).

<sup>12/</sup> *Id.*

<sup>13/</sup> Minn. Stat. § 181A.11 (1976).

§ 213 (c) (2) states that § 212<sup>14/</sup> applies to employees under 16 employed in agriculture in an occupation that the Secretary of Labor has declared to be hazardous for the employment of such children, except when employed by his parent or guardian on a farm owned or operated by that parent or guardian.<sup>15/</sup> The Secretary of Labor has declared that the following occupations in agriculture are particularly hazardous for the employment of children below the age of 16:<sup>16/</sup>

- (1) Operating a tractor of over 20 PTO horsepower, or connecting or disconnecting an implement or any of its parts to or from such a tractor.
- (2) Operating or assisting to operate (including starting, stopping, adjusting, feeding, or any other activity involving physical contact associated with the operation) any of the following machines:
  - (a) Corn picker, cotton picker, grain combine, hay mower, forage harvester, hay baler, potato digger, or mobile pea viner;
  - (b) Feed grinder, crop dryer, forage blower, auger conveyor, or the unloading mechanism of a nongravity-type self-unloading wagon or trailer; or
  - (c) Power post-hole digger, power post driver, or nonwalking type rotary tiller.
- (3) Operating or assisting to operate (including starting, stopping, adjusting, feeding, or any other activity involving physical contact associated with the operation) any of the following machines:
  - (a) Trencher or earthmoving equipment;
  - (b) Fork lift;
  - (c) Potato combine; or
  - (d) Power-driven circular, band, or chain saw.
- (4) Working on a farm in a yard, pen, or stall occupied by a:
  - (a) Bull, boar, or stud horse maintained for breeding purposes; or
  - (b) Sow with suckling pigs, or cow with newborn calf (with umbilical cord present)
- (5) Felling, bucking, skidding, loading, or unloading timber with butt diameter of more than 6 inches.

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<sup>14/</sup> 29 U.S.C. § 212 (1970), as amended, (Supp. V. 1975) prohibits the interstate shipment of goods with which, within 30 days prior to the removal of such goods, oppressive child labor has been employed.

<sup>15/</sup> 29 U.S.C. § 213 (c) (2) (1970).

<sup>16/</sup> 29 C.F.R. § 570.71 (a) (1976).



- (6) Working from a ladder or scaffold (painting, repairing, or building structures, pruning trees, picking fruit, etc.) at a height of over 20 feet.
- (7) Driving a bus, truck, or automobile when transporting passengers, or riding on a tractor as a passenger or helper.
- (8) Working inside:
  - (a) A fruit, forage, or grain storage designed to retain an oxygen deficient or toxic atmosphere;
  - (b) An upright silo within 2 weeks after silage has been added or when a top unloading device is in operating position;
  - (c) A manure pit; or
  - (d) A horizontal silo while operating a tractor for packing purposes.
- (9) Handling or applying (including cleaning or decontaminating equipment, disposal or return of empty containers, or serving as a flagman for aircraft applying) agricultural chemicals classified under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 135 et seq.) as Category I of toxicity, identified by the word "poison" and the "skull and crossbones" on the label; or Category II of toxicity, identified by the word "warning" on the label.
- (10) Handling or using a blasting agent, including but not limited to, dynamite, black powder, sensitized ammonium nitrate, blasting caps, and primer cord; or
- (11) Transporting, transferring, or applying anhydrous ammonia.

The federal regulations do make exceptions to the hazardous occupation classification scheme described above for student-learners, those who have completed certain federal extension service programs and for vocational agriculture training;<sup>17/</sup> and for those employed by their parents.<sup>18/</sup>

Thus, subject to the restrictions described in the first paragraphs of this section, Minnesota law allows the employment of a minor in any agricultural occupation not prohibited by the above list.

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<sup>17/</sup> See 29 C.F.R. § 570.72 (1976).

<sup>18/</sup> See 29 C.F.R. § 570.70 (b) (1976).

## 2. Minimum Wage

The Minnesota Fair Labor Standards Act<sup>1/</sup> contains certain exceptions and requirements of importance to farm employers and farm employees. This section discusses the agriculturally significant aspects of that act.

Unless otherwise excepted, every Minnesota employer must pay each of his employees who is 18 or over \$2.30 per hour and each of his employees who is under 18 \$2.07.<sup>2/</sup> The term "employee", as used in this statute, does not include "any individual employed in agriculture on a farming unit or operation employing less than the equivalent of two full time workers and on any given day no more than four employees."<sup>3/</sup> Forty weeks of employment in a calendar year is considered the equivalent of a full time worker.<sup>4/</sup>

In addition, and again because of the definition of employee, a farm employer is not required to pay the minimum wage to individuals under 18 who are "employed in agriculture on a farm."<sup>5/</sup>

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<sup>1/</sup> Minn. Stat. §§ 177. 21-.44 (1976).

<sup>2/</sup> Minimum Wage, ch. 183, § 1, 1977 Minn. Sess. Law Serv. (West) amending Minn. Stat. § 177.24 (1976).

<sup>3/</sup> Minn. Stat. § 177.23 (7) (1976). It would appear from the literal wording of this statute that a farm employer could avoid being required to pay the minimum wage by selecting one day and having four or less employees work that day. At least one writer has suggested that the proper interpretation of this statute is to read it to require the equivalent of two full time workers plus, on any given day, five or more persons employed before the minimum wage must be paid. See Pedersen, The Changing Legal Status of Minnesota Farm Employees, 2 Wm. Mitchell L. Rev. 53 (1976) at 64 m. 57.

<sup>4/</sup> Minn. Stat. § 177.23 (7) (1976).

<sup>5/</sup> Minn. Stat. § 177.23(7) (1976), as amended by Act of April 5, 1978, ch. 731, § 1, 1978 Minn. Sess. Law Serv. (West). Under the 1978 amendment, farm employees who are under 18 years of age are divided into two groups according to the work they perform: (1) those who perform corn detasseling and (2) those who perform all other farm services. Both of the groups of "under 18" workers are excepted from the requirement that they be paid the minimum wage. Act of April 5, 1978, ch. 731, § 1, 1978 Minn. Sess. Law Serv. (West), amending Minn. Stat. § 177.23(7) (1976). However, for all other purposes of the Minnesota Fair Labor Standards Act, e.g., the overtime provision, the corn detasslers are deemed to be "employees" and therefore enjoy the benefits or protections afforded "employees" under the Act. Id.

If a farm employer is not exempt from the act, in addition to paying the minimum wage he will also be required to pay time and one-half for work in excess of 48 hours per week.<sup>6/</sup> He will also be required to make and keep, for at least 3 years, certain records about his employee.<sup>7/</sup>

Many farm workers are guaranteed a minimum wage by the federal Fair Labor Standards Act.<sup>8/</sup> But there are significant agricultural exceptions in the federal law including, among others, (a) employees of a farmer using not more than 500 man-days of agricultural labor per calender quarter, (b) an unincorporated farmer's immediate family, (c) hand harvest labors paid the prevailing piece rate, and (d) cowboys and shepherds.

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<sup>6/</sup> Minn. Stat. § 177.25 (1) (1976).

<sup>7/</sup> Minn. Stat. § 177.30 (1976).

<sup>8/</sup> 29 U.S.C. § 201-19 (1970), as amended, (Supp. V, 1975).

<sup>9/</sup> 29 U.S.C. § 213 (a) (6) (1970).

### 3. Workmen's Compensation

Compulsory workers' compensation laws have traditionally excluded farm workers.<sup>1/</sup> Two reasons have been advanced for this:<sup>2/</sup> (a) compensation benefits would be impractical to administer because of the seasonal nature of farm work and the large number of small farming operations, and (b) the cost of coverage could not, or should not, be passed on to the consuming public. This section addresses Minnesota workmen's compensation law both because compulsory coverage is now extended to some farm laborers<sup>3/</sup> and because voluntary liability for compensation may be assumed by a farm employer by purchasing a workers' compensation policy.<sup>4/</sup>

Unless excluded, every employer in Minnesota is liable to pay compensation to every employee injured or killed in the course of employment regardless of whether negligence was involved, unless the injury was self-inflicted or was proximately caused by the employee's intoxication.<sup>5/</sup> This provision is in lieu of other liability, and even if the employer is not insured the employee can bring suit without having to show negligence.<sup>6/</sup>

Workmen's compensation law excludes, among others:<sup>7/</sup> (a) persons employed by family farms, (b) spouses, parents and children, regardless of age, of a farmer and employed by that farmer, (c) partners engaged

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<sup>1/</sup> Pedersen, The Changing Legal Status of Minnesota Farm Employees, 2 Wm. Mitchell L. Rev 53 (1976) at 88 n. 209.

<sup>2/</sup> Id. at 89, 90.

<sup>3/</sup> Some farm laborers are compulsorily covered because the exclusion in Minn. Stat. § 176.041 (1) is not broad enough to cover all farm employees (see note 7 for cite to act amending this section of the law).

<sup>4/</sup> Act of May 27, 1977, ch. 342, § 6, 1977 Minn. Sess. Law Serv. (West), amending Minn. Stat. § 176.051 (1976).

<sup>5/</sup> Minn. Stat. § 176.021 (1) (1976).

<sup>6/</sup> Minn. Stat. § 176.031 (1976).

<sup>7/</sup> Act of May 27, 1977, ch. 342, § 5, 1977 Minn. Sess. Law Serv. (West), amending Minn. Stat. § 176.041 (1) (1976).

in any farm operation and the spouses, parents, and children, regardless of age, of any of the partners, (d) an executive officer of a family farm corporation, <sup>8/</sup> and any spouse, parent, or child, regardless of age, of such an executive, (3) other farmers or members of their families exchanging work with the farmer employer or family farm corporation in the same community, and (f) persons whose employment is casual and not in the usual course of business of his employer.

The workers' compensation statute was recently changed in regard to certain farm businesses. Now farm partnerships can elect to be covered under the state workers' compensation program if they provide the required insurance. <sup>8A/</sup>

A "family farm," the employees of which are not covered by workers' compensation, is any farm operation which paid less than \$4,000 in wages, excluding machine hire, to farm laborers during the preceding calendar year. <sup>9/</sup> An important issue which results from this definition is how to determine when a laborer is a farm laborer. The Minnesota Supreme Court has made it clear that a workman is not a farm laborer simply because at the moment he is doing work on a farm. <sup>10/</sup>

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<sup>8/</sup> "Family farm corporation" is used here as defined at Minn. Stat. § 500.24(i)(c) (1976), as amended by Act of April 4, 1978, ch. 722, § 1, 1978 Minn. Sess. Law Serv. (West).

<sup>8A/</sup> Act of May 17, 1979, Ch. 92, § 3, 1979 Minn. Sess. Law Serv. 163(West).

<sup>9/</sup> Act of March 23, 1978, ch. 574, § 1, 1978 Minn. Sess. Law Serv. (West), amending Minn. Stat. § 176.011(11a) (1976). The 1978 amendment increased the wage limitation from \$2,000 to the current \$4,000 level. For purposes of the \$4,000 test, a farm laborer does not include any spouse, parent, or child (regardless of age) of a farmer employed by such farmer. Id. Also excluded are any executive officer of a family farm corporation and his immediate family (as described in the preceding sentence) and other farmers in the same community and their families exchanging work with the employer. Id.

<sup>10/</sup> Oberg v. DuBeau, 202 Minn. 476, N.W. 221 (1938) (Caretaker of a resort who at the moment was doing work on his employer's farm was not a farm laborer.)

A recent case 11/ has restated the test of whether an employee is a farm laborer within the exception to Minnesota's Workmen's Compensation Act and that test is the nature of the employee's employment taken as a whole. The test is not the particular item of work that the employee is doing when injured or the place where the work was performed. 12/

11/ Nelson v. Harder Royal Breeders, Inc., 290 Minn. 487, 113 N.W. 2d 444 (1962).

12/ Id. at 304. The size of a particular operation is not significant. Id.; see Steinmetz v. Klabunde, 261 Minn. 487, 113 N.W. 2d 444 (1962).

The Nelson court held that a claimant who spent 90 percent of his time working directly with turkeys on a large turkey farm was a farm labor, but the court carefully distinguished an Iowa case<sup>13/</sup> because in that case the employee was employed in the processing end of the employer's poultry business.

In any case, a farm laborer does not include a commercial thresherman or a commercial baler.<sup>14/</sup>

Another recent Minnesota case held that the burden of moving one's status as an employee, and not a volunteer,<sup>15/</sup> rests upon the workmen's compensation claimant.<sup>16/</sup> When the issue is whether the injured claimant is an employee or an independent contractor, there is a presumption that one injured while in another's service is an employee.<sup>17/</sup>

The owner of a farm and his family is included within the term employee when a workers' compensation policy is procured if the owner elects to bring himself and his family within the terms of the workers' compensation act, and provides the insurance required thereunder.<sup>18/</sup> The same election is available to the executive officer of a family farm corporation and his family and to partners of a partnership owning a farm.<sup>19/</sup>

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<sup>13/</sup> Crouse v. Lloyd's Turkey Ranch, 251 Iowa 156, 100 N.W. 2d 115 (1959).

<sup>14/</sup> Minn. Stat. § 176.011 (12) (1976).

<sup>15/</sup> Minn. Stat. § 176.011 (9) (1976) defines employee as any person who performs services for another for hire.

<sup>16/</sup> Firkus v. Murphy, Minn. , 246 N.W. 2d 864 (1976).

<sup>17/</sup> Id. at 866 (the court did not make clear whether they felt that the evidence had rebutted this presumption, or whether the presumption did not apply because the issue was whether the labor was voluntary).

<sup>18/</sup> Act of April 5, 1978, ch. 757, § 2, 1978 Minn. Sess. Law Serv. (West), amending Minn. Stat. § 196.012 (Supp. 1977). Prior to the most recent amendment, the owner, executive officer, or partner was automatically included within the term "employee" when a workers' compensation policy was procured, unless he elected in writing not to bring himself and his family within the terms of the workers' compensation act, and the policy stated this election. See, Minn. Stat. § 176.012 (Supp. 1977).

<sup>19/</sup> Act of April 5, 1978, ch. 757, §, 1978 Minn. Sess. Law Serv. (West), amending Minn. Stat. § 176.012 (Supp. 1977). For a family member to be included, the member must be working for the owner. Id. The statute does not include members of the family of the partners who comprise a farm partnership.

#### 4. Unemployment Compensation

The purpose of the Minnesota Employment Security Law<sup>1/</sup> is to benefit persons unemployed through no fault of their own.<sup>2/</sup> The distinction between unemployment compensation and workmen's compensation is that unemployment compensation is based on the assumption that the employee is available for work, whereas workers' compensation is paid on the theory that the employee is disabled from working.<sup>3/</sup>

Minnesota employment security law is discussed in this book because it excludes agricultural labor.<sup>4/</sup> Three reasons have been suggested for the exclusion of farm employees from employment security laws:<sup>5/</sup> (1) lawmakers felt that agriculture would be a deficit industry where benefits paid would exceed taxes collected, (2) lawmakers felt that agriculture should be subsidized, and (3) the seasonal and transient nature of farm employment posed insurmountable administrative obstacles.

With the exception of the services discussed in the succeeding paragraph, Minnesota's security employment law excludes "agricultural labor" from the definition of the term "employment."<sup>6/</sup> Because of this exclusion, farm laborers are not entitled to unemployment benefits<sup>7/</sup>

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<sup>1/</sup> Minn. Stat. §§ 268.026-.25 (1976). The legislature recently consolidated the Department of Employment Services with some other departments to form the Department of Economic Security. See Act of June 2, 1977, ch. 430, §§ 1, 2, 1977 Minn. Sess. Law Serv. (West), to be codified as Minn. Stat. §§ 268A.011, .012.

<sup>2/</sup> E.g., *Sajevic v. Greenbrier Home, Inc.*, 298 Minn. 574, 216 N.W. 2d 864 (1974); see Minn. Stat. § 268.03 (1976).

<sup>3/</sup> *State Department of Employment Security v. Zroker*, 280 Minn. 286, 159 N.W. 2d 190 (1968).

<sup>4/</sup> Federal employment security law also excludes agricultural labor. 29 U.S.C. § 3306 (c) (1) (1970).

<sup>5/</sup> Pedersen, *The Changing Legal Status of Minnesota Farm Employees*, 2 Wm. Mitchell L. Rev. 53 (1976) at 97.

<sup>6/</sup> Act of May 26, 1977, ch. 297, § 2, 1977 Minn. Sess. Law Serv. (West), to be codified as Minn. Stat. § 268.04 (12) (15) (1976).

<sup>7/</sup> See Minn. Stat. § 268.07 (1976), as amended, Act of May 26, 1977, ch. 297, § 12, 1977 Minn. Sess. Law Serv. (West).



and farm employers do not have to pay compensation to the Department of Economic Security.<sup>8/</sup> "Agricultural labor" includes all services performed:<sup>9/</sup>

- (1) In a farm,<sup>10/</sup> in the employ of any person, in connection with cultivating the soil, raising or harvesting an agricultural or horticultural commodity. This includes activities associated with raising livestock, bees, poultry, fur-bearing animals and wildlife;
- (2) In the employ of the owner or operator of a farm in connection with the operation or maintenance of a farm and its tools and equipment (including clearing land after a storm);
- (3) In connection with the production or harvesting of an agricultural commodity;<sup>11/</sup>
- (4) In connection with the operation or maintenance of ditches and waterways used for supplying water for farming purposes;
- (5) In the employ of an operator of a farm in handling, processing, etc., in its unmanufactured state, any agricultural or horticultural product;<sup>12/</sup>

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<sup>8/</sup> See Minn. Stat. § 268.06 (1976), as amended, Act of May 26, 1977, ch. 297, §§ 10, 11, 1977 Minn. Sess. Law Serv. (West).

<sup>9/</sup> Act of May 26 supra at note 6 (includes only those services performed subsequent to December 31, 1939). This parallels the federal exclusion. See 26 U.S.C. § 3306 (c) (1) (1970).

<sup>10/</sup> "Farm" includes stock, dairy, poultry, fruit, fur-bearing animal and truck farms; plantations; ranches; nurseries, ranges and greenhouses. Act of May 26, 1977, ch. 297, § 2, 1977 Minn. Sess. Law Serv. (West) to be codified as Minn. Stat. § 268.04 (12) (15) (1976).

<sup>11/</sup> Agricultural commodity is as defined at 12 U.S.C. § 1141j (1970).

<sup>12/</sup> This exclusion only applies if in the employ of an operator (including cooperatives) who produced more than one-half of the commodity with respect to which the service is performed. Act of May 26, 1977, ch. 297, § 2, 1977 Minn. Sess. Law Serv. (West), to be codified as Minn. Stat. § 268.04 (12) (15) (1976). It is not applicable to labor performed in connection with commercial canning and freezing of agricultural or horticultural commodities after their delivery to a terminal market for distribution or consumption. Id.

- (6) On a farm operated for profit if such service is not in the course of the employer's trade or business.

Starting on January 1, 1978 "agricultural labor", as defined in (1) - (6) above, is "employment" when it is performed for a person who either (a) paid \$20,000 in wages to individuals employed in agricultural labor during any calendar quarter in either the current or the preceding calendar year, or (b) employed four or more individuals in agricultural labor, regardless of whether they were employed at the same time, for some portion of a day in each of 20 different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year.<sup>13/</sup>

For the years 1974 through 1977, "employment" includes services performed for an employing unit of four or more persons (excluding the officers of a corporation if the unit is a family farm corporation), Performing services in agricultural labor in some portion of a day in each of 20 different weeks.<sup>14/</sup> The weeks need not be consecutive, but they must be within the current or the preceding year.<sup>15/</sup>

An individual who is a member of a crew furnished by a crew leader<sup>16/</sup>

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<sup>13/</sup> Act of May 26, 1977, ch. 297, § 2, 1977 Minn. Sess. Law Serv. (West), to be codified as Minn. Stat. § 268.04 (12) (13) (1976). One writer has suggested that there is an ambiguity in test (b) in that it is not clear whether all four employees must be employed on the same day. See Pederson, The Changing Legal Status of Minnesota Farm Employees, 2 Wm. Mitchell L. Rev. 53. (1976) at 98. (Test (b) uses the same words as the earlier test discussed in that article but arranges the phrases in a different order.) This would appear to be a somewhat strained construction under the current wording of the statute.

<sup>14/</sup> Act of May 26, 1977, ch. 297, § 2, 1977 Minn. Sess. Law Serv. (West), to be codified as Minn. Stat. § 268.04 (12) (15) (1976).

<sup>15/</sup> Id.

<sup>16/</sup> "Crew leader" is a person who furnishes individuals to perform service in agricultural labor for another, pays them and has not entered into an agreement with such other person whereby the furnished individual is designated as an employee of such other person. Act of May 26, 1977, ch. 297, § 2, 1977 Minn. Sess. Law Serv. (West), to be codified as Minn. Stat. § 268.04 (12) (13) (1976).

is treated as an employee of the crew leader if crew leader holds a valid certificate of registration;<sup>17/</sup> or if substantially all of the members of the crew operate or maintain tractors, mechanized harvesting or cropdusting equipment, or other mechanized equipment provided by the crew leader; and the individual is not the employee of another person as determined by either of the preceding two paragraphs.<sup>18/</sup> If the individual furnished is not to be treated as an employee of the crew leader under this criteria, then he is an employee of the person to whom he is furnished.<sup>19/</sup>

Services performed by an officer of a family farm corporation are not agricultural labor unless that corporation is an employer under the Federal Unemployment Tax Act.<sup>20/</sup>

Under Minnesota employment security law, the employer and the employee qualify separately. In other words, not all laborers working for an insured employer will be covered. To be covered, the employee must earn 18 credit weeks<sup>21/</sup> and \$540 in wage credits<sup>22/</sup> within the

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<sup>17/</sup> Federal Labor Contractor Registration Act of 1963, 7 U.S.C. §§ 2041-2055 (1970), as amended, (Supp. V, 1975).

<sup>18/</sup> Act of May 26, 1977, ch. 297, § 2, 1977 Minn. sess. Law Serv. (West), to be codified as Minn. Stat. § 268.04 (12) (13) (1976).

<sup>19/</sup> Id.

<sup>20/</sup> Id.; 26 U.S.C. § 3306(a)(2) (1970). Following a recent amendment of the unemployment compensation statute, the same rule now applies to services performed by an individual 16 years of age or under. Act of March 28, 1978, ch. 687, § 1, 1977 Minn. Sess. Law Serv. (West), to be codified as Minn. Stat. § 268.04(12)(13).

<sup>21/</sup> A "credit week" is "any week for which wages have been paid and wages are due and payable but not paid of \$30 or more from one or more employers to an employee for insured work." Minn. Stat. § 268.04(29) (1976).

<sup>22/</sup> "Wage credits" mean "the amount of wages paid and wages due and payable but not paid by or from an employer to an employee for insured work...." Minn. Stat. § 268.04(26) (1916).

base period<sup>23/</sup> of employment.<sup>24/</sup>

Services performed by an individual in the employ of his son, daughter or spouse, and services performed by a child under the age of 18 in the employ of his father or mother are exempt from coverage because they are not "employment".<sup>25/</sup>

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<sup>23/</sup> "Base period" means "the period of fifty-two calendar weeks immediately preceding the first day of an individual's benefit year." Minn. Stat. § 268.04 (2) (1976).

<sup>24/</sup> Minn. Stat. § 268.07 (2) (1976).

<sup>25/</sup> Act of May 26, 1977, ch. 297, § 2, 1977 Minn. Sess. Law Serv. (West), to be codified as Minn. Stat. § 268.04 (12) (15) (3) (1976).

## 5. Safety and Health

The Minnesota Occupational Safety and Health Act<sup>1/</sup> requires employers to furnish employees a place of employment free from recognized hazards likely to cause death, serious injury or harm to employees.<sup>2/</sup> The Act is discussed in this book because a place of employment includes a farm work place or any other environment where any employee is during the course of his employment.<sup>3/</sup>

The Minnesota Act provides for the adoption of federal standards<sup>4/</sup> and the promulgation of separate standards.<sup>5/</sup> All employers must comply with these standards<sup>6/</sup> unless they have acquired a temporary or permanent variance.<sup>7/</sup> Employers must permit the Commissioner of Labor and Industry

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<sup>1/</sup> Minn. Stat. §§ 182.65-.674 (1976). For a discussion of the Act, see Rollins, Minnesota's Occupational Safety and Health Act of 1973, 42 The Hennepin Lawyer, Sept-Oct 1973, at 20.

<sup>2/</sup> Minn. Stat. § 182.653 (2) (1976).

<sup>3/</sup> Minn. Stat. § 182.651 (10) (1976).

<sup>4/</sup> Minn. Stat. § 182.655 (12), (13) (1976); Minn. Reg. MOSHC § 1 (Vol. 11); See 29 C.F.R. 1928.21 (1976).

<sup>5/</sup> Minn. Stat. § 182.655 (1976); See Minn. Reg. MOSHC §§ 40-122 (Vol. 11).

<sup>6/</sup> Minn. Stat. § 182.653 (3) (1976).

<sup>7/</sup> Minn. Stat. §§ 182.653 (6), 182.655 (5)-(9) (1976)

The temporary variance is available if the employer needs time to comply with the standards. Minn. Stat. § 182.655 (5) (1976). The permanent variance may be obtained when the employer shows that his operation is as safe as it would be if he complied with the standards. Minn. Stat. § 182.655 (8) (1976). See Minn. Reg. MOSHC §§ 310-14 (Vol. 11).

to inspect their place of business.<sup>8/</sup> Employers are required to maintain certain records,<sup>9/</sup> and finally, employers must keep their employees informed of employee protections and obligations under this Act.<sup>10/</sup>

If an employee believes that a violation of a safety or health standard exists, he may request an inspection by giving notice to the commissioner of labor and industry.<sup>11/</sup> He may not be discharged for this or any other exercise of his rights established by the MOHSA.<sup>12/</sup>

If an inspector finds a condition or practice in a place of employment which presents a substantial probability that death or serious physical harm could result, he can issue an order which prohibits the employment or continued operation of such place of employment until steps are taken to correct the situation.<sup>13/</sup> For different violations of this act, the employer can be fined from up to \$1000 to \$20,000 plus one year imprisonment.<sup>14/</sup>

The current federal standards related to agriculture,<sup>15/</sup> which have been adopted by Minnesota,<sup>16/</sup> are too complex to discuss in detail in this book. The major subject areas regulated are temporary labor camps, storage of anhydrous ammonia, pulpwood logging, slow moving vehicles (see discussion of state statute on this subject under Chapter I, § 2b (2) of this book), roll-over protective structures for tractors (ROPS)<sup>17/</sup> and farm machines.

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<sup>8/</sup> Minn. Stat. §§ 182.653(4), .659 (1976).

<sup>9/</sup> Minn. Stat. § 182.663 (1976).

<sup>10/</sup> Minn. Stat. § 182.65 (1976). Federal OSHA provides a poster for this purpose. Write OSHA, 110 S. 4th St., Rm. 437, Minneapolis, MN 55401 for free copy.

<sup>11/</sup> Minn. Stat. §§ 182.654 (8), .659 (4) (1976).

<sup>12/</sup> Minn. Stat. §§ 182.654 (9); .669 (1976).

<sup>13/</sup> Minn. Stat. § 182.662 (1) (1976).

<sup>14/</sup> See Minn. Stat. §§ 182.666, .667 (1976).

<sup>15/</sup> See 29 C.F.R. 1928.21 (1976).

<sup>16/</sup> Minn. Reg. MOSHC § 1 (Vol. 11).

<sup>17/</sup> This regulation requires seat belts on tractors of over 20-engine-horsepower. 29 C.F.R. § 1928.51 (b) (z) (1976).

6. Labor Relations Act

The Minnesota Labor Relations Act,<sup>1/</sup> which establishes procedures for handling labor disputes and also establishes unfair employer and employee practices, is not applicable to the farm laborer because the definition of "employee" does not include an individual employed in agricultural labor.<sup>2/</sup> The same is true of the Minnesota Labor Union Democracy Act.<sup>3/</sup>

It is an unfair labor practice for any person or labor union to hinder or prevent, in any way, the production, transportation, processing or marketing by a producer, processor or marketing organization, of agricultural products.<sup>4/</sup> It is an unfair labor practice to conspire to cause injury to a producer, processor or marketing organization by withholding labor or refusing to handle particular agricultural products in order to bring such processor or marketing organization into a plan to inflict damage upon a producer.<sup>5</sup> This section does not outlaw a strike called by the employees of a producer, processor or marketing organization

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<sup>1/</sup> Minn. Stat. §§ 179.01-.17 (1976).

<sup>2/</sup> Minn. Stat. § 179.01 (4) (1976).

<sup>3/</sup> Minn. Stat. § 179.18 (4) (1976).

<sup>4/</sup> Minn. Stat. § 179.11 (9) (1976). "Marketing organization" means an organization of producers or processors organized to engage in any activity in connection with the marketing or selling of agricultural products or with the harvesting, preserving, drying, processing, canning, packing, grading, storing, handling, shipping or utilization thereof, or the manufacturing or marketing of the by-products thereof, or in connection with the manufacturing, selling, or supply of machinery, equipment or supplies for their members or patrons. Minn. Stat. § 179.01 (15) (1976). "Agricultural products" includes, but is not restricted to, horticultural, vitacultural, dairy, livestock, poultry, bee and any farm products. Minn. Stat. § 179.01 (13) (1976).

<sup>5/</sup> Minn. Stat. § 179.11 (9) (1976).

to improve their own working conditions or promote their own rights of bargaining, selection of a bargaining representative or collective bargaining.<sup>6/</sup>

The Federal Labor Relations Act<sup>7/</sup> also excludes farm workers.<sup>8/</sup>

The exclusion of farm workers does not mean they cannot form a union, bargain or strike, but it does mean that they are unable to compel their employers to bargain or to bring charges of unfair labor practices.<sup>9/</sup> As a result, farm workers have turned to boycotts of products produced by uncooperative growers.<sup>10/</sup>

The Minnesota Supreme Court recently upheld an injunction limiting (not prohibiting) a product boycott.<sup>11/</sup> In order to persuade Johnson Brothers Wholesale Liquor Co. to quit doing business with E & J Gallo Winery, United Farm Workers (UFW) picketed retail liquor stores. The Court held that the Secondary Boycott Act<sup>12/</sup> applied to farm workers even though the Labor Relations Act did not because the rationale for excluding farm workers from the Labor Relations Act was not applicable to the Secondary Boycott Act.<sup>13/</sup> The rationale for excluding farm workers from labor relations law is that employer-employee relations in agriculture are assumed to be significantly different from employer-employee relations

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<sup>6/</sup> Id.

<sup>7/</sup> 29 U.S.C. §§ 151-68 (1970), as amended (Supp.V, 1975).

<sup>8/</sup> 29 U.S.C. § 152 (3) (1970).

<sup>9/</sup> Pedersen, The Changing Status of Minnesota Farm Employees, 2 Wm. Mitchell L. Rev. 53 (1976) at 102.

<sup>10/</sup> Id.

<sup>11/</sup> Johnson Brothers Wholesale Liquor Co. v. United Farm Workers National Union, Minn. , 241 N.W. 2d (1976).

<sup>12/</sup> Minn. Stat. §§ 179.40-.47 (1976). The Secondary Boycott Act declares a secondary boycott to be an illegal combination in restraint of trade, a violation of the public policy of the state and an unfair labor practice. Minn. Stat. §§ 179.43, .44 (1976).

<sup>13/</sup> Minn. at , n. , 241 N.W. 2d n. e.



in other industry.<sup>14/</sup> The court also held that the Minnesota Anti-Injunction Act<sup>15/</sup> did not prohibit injunctive relief against secondary boycotts.<sup>16/</sup>

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<sup>14/</sup> Id.

<sup>15/</sup> Minn. Stat. §§ 185.07-.19 (1976).

<sup>16/</sup> Minn. at , 241 N.W. 2d at 298.

## 7. Insurance for Migrant Laborers

Much of Minnesota's agricultural activity involves the hiring of migrant labor. Any person employing five or more recruited migrant laborers,<sup>1/</sup> whether full or part time, who are employed in the processing of agricultural produce other than field labor, must provide at his expense health care insurance during the period of employment.<sup>2/</sup> This insurance must be provided each recruited migrant laborer who is not a resident of Minnesota and who does not have health care insurance meeting the requirements of the commissioner of economic security.<sup>3/</sup> This insurance need not be purchased for any employee performing exclusively agricultural labor as defined by the Internal Revenue Code.<sup>4/</sup> In general terms, insurance need not be purchased for laborers involved in the production of agricultural products, or for laborers involved in the processing of agricultural products in their unmanufactured state as long as the products were, for the most part, produced by the employing person.<sup>5/</sup>

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<sup>1/</sup> The Minnesota legislature has recently created a council on the affairs of Spanish-speaking people. Act of March 22, 1978, ch. 510, § 1, 1978 Minn. Sess. Law Serv. (West). One of the specifically enumerated duties of this council is to advise the governor and the legislature on the problems encountered by Spanish-speaking migrant agricultural workers. Id., § 3(a). The council is composed of seven members who are appointed by the governor with the advice and consent of the Senate. Id., § 1.

<sup>2/</sup> Minn. Stat. § 181.73 (1976).

<sup>3/</sup> Id.

<sup>4/</sup> Id.; 26 U.S.C. § 3121(g) (1970).

<sup>5/</sup> See 26 U.S.C. § 3121(g) (1970).

#### 8. Custom Operator's Lien

Much of the work done on farms is not done by employees, but is done instead by independent contractors known as custom operators. A custom operator is someone offering his services to the public in general, e.g. a custom combiner.

Any person who owns or operates a threshing machine, combine, clover huller, corn picker, corn sheller, corn shredder, grain dryer, ensilage cutter or hay blower has a lien upon the grain threshed, clover hulled, corn shelled, shredded, picked or dried, ensilage cut or hay baled, as the case may be, for the value of such service.<sup>1/</sup> This lien is preferred to all other liens except the lien given for the seed from which the grain was grown.<sup>2/</sup>

The custom operator must file,<sup>3/</sup> within 15 days after such threshing, etc., a verified statement of the amounts and kinds of grains threshed, etc., and the time and place of doing the same giving the first and last days, the rates and total charge, the amount paid, the balance due, the name of the owner and the person requesting the work be done and a notice that a lien is claimed.<sup>4/</sup> He may foreclose the lien at any time up until 6 months.<sup>5/</sup> The expiration of the lien terminates all rights growing out of it, and an action for conversion brought thereafter cannot be maintained.<sup>7/</sup> If the owner retains part of the grain threshed, he can retain

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<sup>1/</sup> Minn. Stat. § 514.65 (1976).

<sup>2/</sup> Id.; Declaring the thresher's lien superior to all other liens except those given for seed has been upheld as constitutional. Phelan v. Terry, 101 Minn. 454, 112 N.W. 872 (1907).

<sup>3/</sup> Pursuant to Minn. Stat. § 336.9-401.

<sup>4/</sup> Minn. Stat. § 514.66 (1976).

<sup>5/</sup> Id. Foreclosure is as prescribed by Article 9 of the U.C.C., Minn. Stat. § 336.9-100 et seq.

<sup>6/</sup> Ehmke v. Hartzell, 160 Minn. 38, 199 N.W. 748 (1924).

a lien on that grain without the otherwise required filing.<sup>7/</sup>

Any person who disposes of property covered by a thresher's lien, without the consent of the lienholder, is guilty of a misdemeanor.<sup>8/</sup>

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<sup>7/</sup> Gordon v. Freeman, 112 Minn. 482, 128 N.W. 834 (1910).

<sup>8/</sup> Minn. Stat. § 514.66 (1976). The minimum penalty is a \$25 fine. Id.

9. Inmate Labor

It is interesting to note that even inmates may get involved in agricultural labor on state owned land. When it is conducive to rehabilitation, inmates under the Commissioner of Corrections may be used in general improvement, maintenance, conservation, reforestation, soil erosion control, soil rehabilitation and cultivation of land within the control of the Commissioner, or pursuant to an agreement with the head of a state department or agency, land under that department or agency.<sup>1/</sup>

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<sup>1/</sup> Minn. Stat. § 241.20 (1976).

#### D. Credit

Today's farmer makes extensive use of credit in his farming operation. In fact, because of the large outlays of capital required to purchase land, machinery, livestock, feed, seed, fertilizer and buildings, it would be extremely difficult to operate a farm without borrowed money (and very unwise to try to do so).

This Topic begins with a short section on interest rates. Next there is a section on real estate mortgages followed by a section on security interests in personal property. This section on secured transactions is particularly timely because the Minnesota Legislature recently (1976) adopted the 1972 version of Article 9 of the Uniform Commercial Code. The 1972 version contained some changes of significance to agricultural financing. The Topic wraps up with two short sections: one on an archaic law authorizing counties to make feed and seed loans, and the other on crimes in obtaining credit.

##### 1. Interest Rates

Minnesota law establishes an interest rate of 6% for legal indebtedness unless a different rate is contracted for in writing.<sup>1/</sup> This same provision of the law establishes a maximum interest rate of 8%.<sup>2/</sup> The interest rate on agricultural loans is governed by a separate statute.

In the case of a loan for business<sup>3/</sup> or agricultural purposes, a lender may charge on any loan or discount made or upon any note, bill or other evidence of debt, interest at a rate of not more than 4½% in

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<sup>1/</sup> Minn. Stat. § 334.01 (1976).

<sup>2/</sup> Id. Loans of \$100,000 or more are exempt until July 1, 1978. Id.

<sup>3/</sup> "Business" means a commercial or industrial enterprise which is carried on for the purpose of active or passive investment or profit. Act of May 27, 1977, ch. 303, § 1, 1977 Minn. Sess. Law Serv. (West), amending Minn. Stat. § 334.011 (1) (1976).

excess of the discount rate on 90 day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district encompassing Minnesota.<sup>4/</sup> For purposes of this law, "agricultural" means the production, harvest, exhibition, marketing, transportation, processing or manufacture of agricultural products, including horticultural, vitacultural and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any parts thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof.<sup>5/</sup>

A state chartered agricultural credit corporation<sup>6/</sup> may charge an interest rate of 10%.<sup>7/</sup> However, if the loan is for agricultural purposes as defined in the preceding paragraph, the 4½% in excess provision of the law, and not the 10% rate, is controlling.<sup>8/</sup>

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<sup>4/</sup> Act of May 27, 1977, ch. 303, § 1, 1977 Minn. Sess. Law Serv. (West), amending Minn. Stat. § 334.011 (1) (1976).

<sup>5/</sup> Id.

<sup>6/</sup> Operating under 12 U.S.C. 1401-04 (1970).

<sup>7/</sup> Minn. Stat. § 334.061 (1976).

<sup>8/</sup> See Act of May 27, 1977, ch. 303, § 1, 1977 Minn. sess. Law Serv. (West), amending Minn. Stat. § 334.011 (1) (1976).

## 2. Mortgages

A mortgage is one of the most important means available to the farmer for procuring needed working capital. The purchase-money mortgage<sup>1/</sup> is a commonly used device to help finance newly acquired land. The farmer can either mortgage his real property or his personal property (called a chattel mortgage). In fact, it is not at all unusual for a farmer to have most all of his real and personal property mortgaged. This book explores only the very basics of a mortgage, and discusses farming after mortgage foreclosure. This particular section is devoted to mortgages of real property. A separate section entitled secured transactions focuses on security in personal property.

- a. Characteristics of a Mortgage. Minnesota is a lien-theory state.<sup>2/</sup> This means that when property is mortgaged, the title to the property remains with the mortgagor (owner), and does not pass to the mortgagee (financing party). The mortgagee has a lien upon the property mortgaged.

There is some confusion in early case law as to whether a mortgage was a lien<sup>3/</sup> or a conveyance<sup>4/</sup> of the property. But even when called a conveyance, it was described as "defeasible upon the payment of money or the performance of some condition."<sup>5/</sup> Minnesota statutory law now

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<sup>1/</sup> A purchase-money mortgage is the financing of a parcel of land by granting a mortgage on that parcel of land as security, while acquiring title. E.g., *Martin v. Knox*, 117 Minn. 428, 136 N.W. 15 (1912). It is a mortgage to secure unpaid purchase money. *Id.*

<sup>2/</sup> *Mutual Benefit Life Insurance Co. v. Frantz Klodt & Son*, Minn. , 237 N.W. 2d 350, 353 (1976).

<sup>3/</sup> See, e.g., *Fredin v. Cascade Realty Co.*, 205 Minn. 256, 285 N.W. 615 (1939).

<sup>4/</sup> E.g., *Allison v. Armstrong*, 28 Minn. 276, 9 N.W. 806 (1881).

<sup>5/</sup> E.g., *Buse v. Page*, 32 Minn. 111, 19 N.W. 736 (1884).



provides that the mortgage of real property is not to be deemed a conveyances so as to enable the owner of the mortgage (mortgagee) to recover possession without a foreclosure.<sup>6/</sup> This same provision of the law allows the mortgagor to assign, as additional security for the debt secured by the mortgage, the rents and profits from the mortgaged real estate.<sup>7/</sup> But this does not authorize possession and control of rents and profits during the period between foreclosure and sale for the full amount of the indebtedness and the expiration of the period of redemption.<sup>8/</sup>

In one section of the Minnesota Code, a mortgage is defined as any instrument creating or evidencing a lien of any kind on such property, given or taken as security for a debt, notwithstanding such debt may also be secured in part by alien upon personalty.<sup>9/</sup> A pledge of real property, in whatever form, for payment of a debt, constitutes a mortgage.<sup>10/</sup> For example, a sale and leaseback, even though there is no provision for defeasance of title upon performance of stipulated conditions, has been treated as a mortgage when the conveyance was security for a debt.<sup>11/</sup>

When B (banker) provides money to F (farmer) to permit F to regain title to F's farm which has been lost through foreclosure and thereafter B takes warranty deed from F and gives F an option to purchase it back, and during the option period F controls the property and continues his

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<sup>6/</sup> Minn. Stat. § 559.17 (1976).

<sup>7/</sup> Id. This is valid if in the mortgage instrument or in a separate instrument. Id.

<sup>8/</sup> Cross Companies, Inc. v. Citizens Mortgage Investment Trust, Minn., 232 N.W. 2d 114, 115 (1925).

<sup>9/</sup> Minn. Stat. § 287.01 (3) (1976). The definition is part of the chapter on mortgage registry tax.

<sup>10/</sup> Sanderson v. Engel, 182 Minn. 256, 234 N.W. 450 (1931).

<sup>11/</sup> Land O'Lakes Dairy Co. v. Wadena County, 229 Minn. 263, 39 N.W. 2d 164 (1949), rehearing denied, 338 U.S. 945 (1949).

farming operation, the transaction is a mortgage and not an absolute sale.<sup>12/</sup> When the purpose is to give security on real property for a debt, equity will give it effect as a mortgage.<sup>13/</sup> Because the transaction is characterized as a mortgage, B cannot gain title to the property without foreclosing,<sup>14/</sup> thus ensuring F of a period of redemption.<sup>15/</sup>

The purchaser of mortgaged land can purchase the land subject to the mortgage, or he may assume the mortgage. The distinction only becomes important if there is a default and the money from a sale of the land is not enough to cover the debt owed the mortgagee. If the land has been conveyed subject to a mortgage, the mortgagee's recourse for a debt not satisfied by the sale of the property, if any, is against the original mortgagor. If the purchaser assumes the mortgage (this may require the mortgagee's approval), then the mortgagee's recourse for the amount not covered by the sale of the land, if any, is against the purchaser. In either case, the purchaser will be making the mortgage payments and must continue to do so to avoid foreclosure.

A mortgage can be discharged by filing a record of certificate of satisfaction executed and acknowledged by the mortgagee.<sup>16/</sup> When the debt is paid, the mortgage is discharged, and the mortgagee has no further interest in the land.<sup>17/</sup>

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<sup>12/</sup> Gagne v. Hoban, 280 Minn. 475, 159 N.W. 2d 896 (1968).

<sup>13/</sup> Id.

<sup>14/</sup> Minn. Stat. § 559.17 (1976).

<sup>15/</sup> Minn. Stat. §§ 580.23, 581.10 (1976). See discussion of redemption, *infra*.

<sup>16/</sup> Minn. Stat. § 507.40 (1976).

<sup>17/</sup> *E.g.*, Hendricks v. Hess, 112 Minn. 252, 127 N.W. 995 (1910).

- b. Loans on Real Estate Restricted. A bank or trust company cannot make any loan upon the security of real estate unless it is a first lien, except: (a) upon real property to secure a loan previously contracted, or (b) upon farm real estate to secure a loan made a farmer who resides in a county which due to weather conditions is declared a federal disaster area at the time the loan is signed.<sup>18/</sup> Before this type of loan can be made, the real estate must be appraised by a committee appointed by the board of directors of the lending institution.<sup>19/</sup>

If it has been established that there are no intervening liens, a bank may take additional liens on the same security and these will be considered to be part of the same mortgage lien.<sup>20/</sup>

These restrictions do not apply to any loan guaranteed by the federal government.<sup>21/</sup>

- c. Mortgage Foreclosure. Mortgages may be foreclosed by action<sup>22/</sup> or by advertisement.<sup>23/</sup> The purpose of foreclosure is to have the property applies to the satisfaction of the debt or other obligation secured thereby.<sup>24/</sup> There is an argument that foreclosure by advertisement is unconstitutional in that it is a deprivation of property prohibited by the due process clause.<sup>25/</sup>

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<sup>18/</sup> Act of May 18, 1977, ch. 103, § 1, 1977 Minn. Sess. Law Serv. (West), amending Minn. Stat. § 48.19 (1976).

<sup>19/</sup> *Id.* The board may accept an appraisal made by or for an agency of the federal government when such agency is guaranteeing or insuring the loan or any part thereof. *Id.*

<sup>20/</sup> Act of May 18, 1977, ch. 103, § 1, 1977 Minn. sess. Law Serv. (West), amending Minn. Stat. § 48.19 (1976).

<sup>21/</sup> *Id.*

<sup>22/</sup> Minn. Stat. § 581.01-.12 (1976).

<sup>23/</sup> Minn. Stat. § 580.01 (1976). To be foreclosed by advertisement, a mortgage must contain a power of sale. *Id.*; see *Webb v. Lewis*, 45 Minn. 285, 47 N.W. 803 (1891).

<sup>24/</sup> *Fredin v. Cascade Realty Co.*, 205 Minn. 256, 285 N.W. 615 (1939).

<sup>25/</sup> *F & H Investment Co. v. Sachman-Gilliland Corp.*, Minn. 232 N.W. 2d 769 (1975).

Before there can be foreclosure by advertisement, it is requisite: (1) that some default in a condition of the mortgage has occurred, (2) that no action is pending for recovery of the debt then remaining, and (3) that the mortgage and all assignments be recorded.<sup>26/</sup> Six weeks published notice must be given that the mortgage will be foreclosed by sale, and a copy of such notice must be served on the person in possession of the mortgaged premises.<sup>27/</sup>

The sale of property foreclosed by advertisement is made by the sheriff.<sup>28/</sup> A mortgage foreclosure sale which is free from fraud or irregularity will not be invalidated for inadequacy of price when, for example, a farm is sold for \$32,504, even though the trial court found the value of the farm to be as much as \$45,000.<sup>29/</sup> If there is any surplus, and there rarely will be because the mortgagee is frequently the only bidder, it goes to the mortgagor.<sup>30/</sup>

For foreclosure by action, a judgment must be entered by the court stating the amount due, with costs and disbursements, and directing the sheriff to sell the property.<sup>31/</sup> The surplus from a sale, if any, goes to the mortgagor.<sup>32/</sup> The court must confirm the sale, and if it appears that justice has not been done, it may order a resale.<sup>33/</sup>

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<sup>26/</sup> Minn. Stat. § 580.02 (1976).

<sup>27/</sup> Minn. Stat. § 580.03 (1976). The requisites of the notice are spelled out in Minn. Stat. § 580.04 (1976).

<sup>28/</sup> Minn. Stat. § 580.06 (1976). The sale will be in the county where the premises are situated and must be between 9 a.m. and sunset. *Id.*

<sup>29/</sup> *Kantack v. Kreuer*, 280 Minn. 232, 158 N.W. 2d 842 (1968). (mortgagee was only bidder; bid was for unpaid principal, interest and costs).

<sup>30/</sup> Minn. Stat. § 580.10 (1976). Mortgagee is allowed to purchase. Minn. Stat. § 580.11 (1976).

<sup>31/</sup> Minn. Stat. § 581.03 (1976).

<sup>32/</sup> Minn. Stat. § 581.06 (1976).

<sup>33/</sup> Minn. Stat. § 581.08 (1976).

If the mortgaged premises consist of separate and distinct farms or tracts, they must be sold separately (either by action or by advertisement), and no more farms or tracts may be sold than are necessary to satisfy the amount due at the date of the notice of the sale, with interest, taxes paid, and costs of the sale.<sup>34/</sup> If it is a foreclosure by action, and it appears that the sale of the whole of the mortgaged premises in one parcel is most beneficial to the interests of the parties, the court may require that the entire mortgaged premises be sold, notwithstanding that it may consist of distinct farms or tracts.<sup>35/</sup>

- d. Redemption. After a mortgage has been foreclosed, the owner has a certain period during which he can redeem or reclaim, the property by paying the sum of money for which the land was sold, with interest<sup>36/</sup> and any further sum which may be payable.<sup>37/</sup> The period of redemption is 6 months,<sup>38/</sup> unless one of the following three events occur, in which event the period of redemption is 12 months:<sup>39/</sup> (a) the mortgage was executed prior to July 1, 1967, (b) the amount claimed to be due is less than 66 2/3 percent of the original principal, or (c) the mortgaged premises exceed 10 acres in size. Most agricultural land will exceed 10 acres in size and thus have a 12 month period of redemption. Creditors are entitled to redeem if the owner-mortgagor does not.<sup>40/</sup>

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<sup>34/</sup> Minn. Stat. §§ 580.08, 581.02 (1976).

<sup>35/</sup> Minn. Stat. § 581.04 (1976).

<sup>36/</sup> The interest is from the time of sale at the rate provided to be paid on the mortgage debt, not to exceed 8%, and if no rate is provided, 6%. Minn. Stat. §§ 580.23, 581.10 (1976).

<sup>37/</sup> Minn. Stat. §§ 580.23, 581.10 (1976). Further sums which may be payable are taxes paid by the purchaser, insurance premiums paid by the purchaser, etc. See Minn. Stat. § 582.03.

<sup>38/</sup> Minn. Stat. §§ 580.23 (1), 581.10 (1976). If the redemption period is 6 months, the purchaser at the sale waives his right to a deficiency judgment against the mortgagor. Minn. Stat. § 580.23 (1) (1976).

<sup>39/</sup> Minn. Stat. §§ 580.23 (2), 581.10 (1976).

<sup>40/</sup> Minn. Stat. §§ 580.24, 581.10 (1976).

The Minnesota Supreme Court has held that the right of the owner to redeem cannot be extinguished by an agreement made at the time.<sup>41/</sup> The redemption period could, however, be extended by agreement.<sup>42/</sup>

The effect of redemption is to annul the sale and leave the property as if a mortgage had never been made.<sup>43/</sup>

The mortgagor has the right to possession of the property up until the expiration of the period of redemption.<sup>44/</sup> The mortgagor is also entitled to rents and profits during the period of redemption.<sup>45/</sup>

e. Farming After Foreclosure. When a mortgage on farm land is foreclosed, or farm lands are sold upon execution, and the period of redemption expires between April 15 and October 1, certain parties<sup>46/</sup> may apply to the district court offering to farm the land during that year upon such terms as the court may find equitable.<sup>47/</sup> It must appear to the court that the lands may not be farmed during that year unless it intervenes.<sup>48/</sup> The petition to the court must set forth the claims of the applicant of his interest in the land, that the land will not be farmed that year except under order of the court and that the petitioner is unable to redeem the lands.<sup>49/</sup>

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<sup>41/</sup> Albright v. Henry, 285 Minn. 452, 174 N.W. 2d 106 (1970).

<sup>42/</sup> See Hanson v. Fergus Falls National Bank and Trust Co., 242 Minn. 498, 502, 65 N.W. 2d 857 (1954).

<sup>43/</sup> Minn. Stat. §§ 580.27, 581.02 (1976); e.g. Slagle v. Slagle, 187 Minn. 1, 244 N.W. 79 (1932).

<sup>44/</sup> E.g., Cross Companies, Inc. v. Citizens Mortgage Investment Trust, Minn. , 232 N.W. 2d 114 (1975).

<sup>45/</sup> E.g., Mutual Benefit Life Insurance Co. v. Frantz Klodt & Son, Minn. , 237 N.W. 2d 350, 353 (1976).

<sup>46/</sup> The mortgagor, the owner in possession of the mortgaged premises, anyone claiming under the mortgagor, or any one liable for the mortgage debt.

<sup>47/</sup> Minn. Stat. § 561.11 (1976). For a discussion of the rationale behind this statute, see Minnesota Legislation of 1936 and 1937, 22 Minn. L. Rev. 219 at 242 n. 60 (1938).

<sup>48/</sup> Minn. Stat. § 561.11 (1976).

<sup>49/</sup> Id.

The petition and a notice of motion must be served upon the mortgagee or execution creditor and upon each creditor of the mortgagor holding a lien of record upon the mortgaged premises.<sup>50/</sup> At a hearing, the court may determine a fair rental value of the property for the period from the expiration of the redemption period through October 1, and the court may require the parties to execute a lease through October 1.<sup>51/</sup> The tenant will have a reasonable time after October 1 to remove the crops and other articles of personal property.<sup>52/</sup> The court may grant the owner of the sheriff certificate of redemption or certificate of execution sale the right to plow the land after the crops have been removed or should have been removed.<sup>53/</sup>

This process is not considered an extension of the period of redemption, but rather a granting of relief in equity to prevent irreparable loss and to fully compensate the owner of the sheriff certificate.<sup>54/</sup>

In the absence of a petition to the court, the mortgagor relinquishes any right to crops not severed when the mortgagee enters into possession, absent a contrary agreement.<sup>55/</sup> The mortgagor may be entitled to keep a crop harvested after the expiration of a period of redemption if the purchaser at foreclosure makes no demand for it.<sup>56/</sup>

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<sup>50/</sup> Minn. Stat. § 561.12 (1976). The hearing will be 10-20 days after such service. Id.

<sup>51/</sup> Minn. Stat. § 561.14 (1976).

<sup>52/</sup> Id.

<sup>53/</sup> Minn. Stat. § 561.15 (1976).

<sup>54/</sup> Minn. Stat. § 561.16 (1976).

<sup>55/</sup> Schuchard v. St. Anthony & Dakota Elevator Co., 176 Minn. 37, 222 N.W. 292 (1928); McCray v. Superannuated Fund of Evangelical Ass'n, 167 Minn. 295, 208 N.W. 1001 (1926).

<sup>56/</sup> Schuchard, supra at note 55; Gunderson v. Hoff, 167 Minn. 413, 209 N.W. 37 (1926).

- f. Mortgage of a Homestead. If the owner of land is married, such owner cannot mortgage his or her homestead,<sup>57/</sup> except for purchase money<sup>58/</sup> unpaid thereon, without the signature of his or her spouse.<sup>59/</sup> By joint deed, a husband or wife can convey the real estate of either.<sup>60/</sup>

For additional discussion, see Chapter I, §§ A.1.c. and A.1.e. of this book.

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<sup>57/</sup> See Chapter I, § A.1.e.

<sup>58/</sup> See note 1, *supra*; See also Minn. Stat. § 507.03 (1976).

<sup>59/</sup> Minn. Stat. § 507.02 (1976); see *Anderson v. First National Bank of Pine City, Minn.* 228 N.W. 2d 257 (1975).

<sup>60/</sup> Minn. Stat. § 507.02 (1976).



### 3. Secured Transactions

The modern farmer relies extensively upon personal property as a source of credit. The real estate mortgage, discussed in the preceding section, is an important source of long term credit for financing real property purchases and improvements to real property. Personal property, on the other hand, is an important source of shorter term credit for financing the purchase of equipment, livestock, feed, seed, fertilizer and similar items.

Article 9 of the Uniform Commercial Code<sup>1/</sup> sets out a comprehensive scheme for the regulation of security interests in personal property. The article applies to security interests created by contract including pledge, assignment, chattel mortgage, chattel trust, trust deed, factor's lien, equipment trust, conditional sale, trust receipt, other lien or title retention contract and lease or consignment intended as security.<sup>2/</sup> The purpose of these security devices, and hence of a "security agreement",<sup>3/</sup> is to secure performance of some obligation usually repayment of a loan or purchase price.

Numerous reasons have been advanced for Article 9's special treatment of farmers. One writer has suggested that the farmer merits special consideration due to the peculiar collateral used in farm operations (supply and demand are geared to uncontrollable factors), and that without special

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<sup>1/</sup> Minn. Stat. §§ 336.9-101-508 (1976).

<sup>2/</sup> Minn. Stat. § 336.9-102 (1976).

<sup>3/</sup> "Security agreement" means "an agreement which creates or provides a security interest." Minn. Stat. § 336.9-105 (1) (1976). The agreement may be designed to fit the functional needs of the parties subject only to the exclusions in Minn. Stat. § 336.9-104 (1976). A standard farm lease whereby the lessor secures performance by taking security is a security agreement. Op. Atty. Gen., 373v-17, Sept. 7, 1966 (Crops Mortgaged to Owner.)

protection, a farmer is a greater financial risk to a creditor than is ordinary business man.<sup>4/</sup> Another writer suggests that the reasons for special consideration to farmers are that the UCC was written by commercial financiers lacking detailed knowledge of farm financing and that the draftsmen of the UCC did not have much to work with because many of the various state laws were illogical and inconsistent.<sup>5/</sup> Still another writer suggests that the reasons for special consideration to farmers are that most farm produce sales are more analagous to bulk sales than other types of sales, and it is easy for the buyer to protect himself in such transactions, but it is difficult for the lender to do so.<sup>6/</sup>

- a. "Collateral" and "Goods". "Collateral" means the property subject to a security interest.<sup>7/</sup> It is a general term for the tangible and intangible property subject to a security interest.<sup>8/</sup> Collateral which consists of tangible property is goods.<sup>9/</sup>

"Goods", in general terms, includes all things which are movable at the time the security interest attaches, but also includes the unborn young of animals and growing crops.<sup>10/</sup> The Code further classifies goods as follows:<sup>11/</sup>

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<sup>4/</sup> Note, Farm Financing Under the Uniform Commercial Code, 44 N.D.L. Rev. 553, 553 (1968).

<sup>5/</sup> Miller, Farm Collateral Under the UCC; "Those Are Some Mighty Tall Silos, Ain't They Fella?", 20 S.D.L. Rev. 514 nn. 4 & 5 (1975). The writer also states that "The code approaches farming as an occupation peopled by simple, unsophisticated tillers of the soil who need the mantle of protective legislation to survive...." Id. at 515 & n.3.

<sup>6/</sup> Kaufman, Whodunit: Farm Products Collateral Under the Code, 16 Washburn L.J. 250, 252-53 (1977).

<sup>7/</sup> Minn. Stat. § 336.9-105 (c) (1976).

<sup>8/</sup> Id., comment 3.

<sup>9/</sup> Id., comment 3.

<sup>10/</sup> Minn. Stat. § 336.9-105 (h) (1976).

<sup>11/</sup> Minn. Stat. § 336.9-109 (1976).

(1) "consumer goods" if they are used or bought for use primarily for personal, family or household purposes;

(2) "equipment" if they are used or bought for use primarily in business (including farming or a profession) or by a debtor who is a nonprofit organization or a governmental subdivision or agency or if the goods are not included in the definitions of inventory, farm products or consumer goods;

(3) "farm products" if they are crops or livestock or supplies used or produced in farming operations or if they are products of crops or livestock in their unmanufactured states (such as ginned cotton, wool-clip, maple syrup, milk and eggs), and if they are in the possession of a debtor engaged in raising, fattening, grazing or other farming operations. If goods are farm products they are neither equipment nor inventory;

(4) "inventory" if they are held by a person who holds them for sale or lease or to be furnished under contracts of service or if he has so furnished them, or if they are raw materials, work in process or materials used or consumed in a business. Inventory of a person is not to be classified as his equipment.

These classifications are important because there are different requirements for creating security interests in the different types of collateral.

Each of the classifications is mutually exclusive so that, for example, the same property cannot at the same time and as to the same person be both equipment and inventory.<sup>13/</sup> In a borderline case-- a farmer's jeep could be either consumer goods or equipment--the principal use to which the property is put is determinative.<sup>14/</sup>

- b. Farm Products. Goods are "farm products" only if they are in the possession of a debtor engaged in farming operations.<sup>15/</sup> Animals in a herd of livestock are covered whether they are acquired by purchase or result from natural increase.<sup>16/</sup> Products of crops or livestock remain farm

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<sup>12/</sup> See In Re Le Mieux, 362 F. Supp. 1040 (D. Minn. 1973).

<sup>13/</sup> Minn. Stat. § 336.9-109 (1976) comment 2.

<sup>14/</sup> Id.

<sup>15/</sup> Minn. Stat. § 336.9-109 (1976), comment 4. "Farming operations" is not defined but it at least includes raising livestock as well as crops, and since eggs are products of livestock, livestock includes fowl. Id.

<sup>16/</sup> Minn. Stat. § 336.9-109 (1976), comment 4.

products so long as they are in the possession of a debtor engaged in farming operations and have not been subjected to a manufacturing process.<sup>17/</sup> They lose their status as farm products if they are subjected to a manufacturing process, even if they remain in the possession of a person engaged in farming operations.<sup>18/</sup> What constitutes manufacturing is not determined by the Code, but those processes closely connected with farming<sup>19/</sup> would not constitute manufacturing while extensive canning, on the other hand, would be manufacturing.<sup>20/</sup> After farm products are subjected to manufacturing they become inventory if held for sale.<sup>21/</sup>

Farm products also lose their status as "farm products" if they come into the possession of a person not engaged in farming operations.<sup>22/</sup>

For further discussion, farm products will be broken down into two categories; (1) crops and products of crops, and (2) livestock and products of livestock.

(1) Crops and Products of Crops.

The Code used to prevent farmers from pledging future crops by stating that a debtor had no rights in a crop until it was planted or otherwise become growing.<sup>23/</sup> This was contrary to the general rule that a lender could take a security interest in all personal

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<sup>17/</sup> Id. The purpose for which the products are used is immaterial, e.g. a cash crop farmer is treated the same as a farmer using crops for feeds. Id.

<sup>18/</sup> Minn. Stat. § 336.9-109 (1976), comment 4.

<sup>19/</sup> E.g., pasteurizing milk or boiling sap to produce syrup or sugar.

<sup>20/</sup> Minn. Stat. § 336.9-109 (1976), comment 4.

<sup>21/</sup> Id.

<sup>22/</sup> Id. If they come into the possession of a marketing agency for sale or distribution or of a manufacturer or processor as raw materials, they become inventory. Id.

<sup>23/</sup> See Uniform Commercial Code § 9-204 (1962 version), Likewise, a debtor had no interest in unborn young until they were conceived. Id. A levy can be made on growing crops, but no sale can be made until the crop is fit to be harvested. Minn. Stat. § 550.17 (1976).

property, both present and future, owned by the borrower. Limitations on security interests in after acquired crops and unborn young of animals were deleted from the 1972 Code <sup>24/</sup> as was the rule that a debtor has no rights in a crop until it is planted or otherwise becomes growing.<sup>25/</sup>

A secured party wishing to perfect a security agreement in growing crops must file a financing statement in the county where the land is located.<sup>26/</sup> Other farm product filings are in the county of the debtor's residence (if the debtor is a resident of Minnesota).<sup>27/</sup>

Both the security agreement and the filed financing statement of a security interest in crops must contain a description of the land involved.<sup>28/</sup>

A description is sufficient if it reasonably identifies what is described.<sup>29/</sup> If a description is not sufficient or accurate, it may

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<sup>24/</sup> Adopted by Minnesota in 1976.

<sup>25/</sup> Minn. Stat. § 336.9-204 (1976). This Article validates a security interest in the debtor's existing and future assets even though the debtor has liberty to use or dispose of collateral without being required to account for proceeds or substitute new collateral. *Id.* comment 2.

<sup>26/</sup> Minn. Stat. § 336.9-401 (1) (1976).

<sup>27/</sup> *Id.* (This includes livestock.)

<sup>28/</sup> Minn. Stat. § 336.9-203 (1) (a) (1976).

<sup>29/</sup> Minn. Stat. § 336.9-110 (1976). A federal court has held that "crops growing or to be grown on the farm of Oscar B. Chauncey located one mile north of Offerman, Georgia," is an adequate description. *United States v. Biz Z Warehouse*, 311 F.Supp. 283 (S.D.Ga. 1970). "Land owned or leased by the debtor in Cherokee County, Kansas," is not sufficient because it is not easy to find which lands are leased by the debtor. *Chanute Production Credit Association v. Weir Grain Supply, Inc.*, 210 Kan. 181, 499 P.2d 517 (1972).

result in the loss of the entire security interest,

The general rule of priorities is that where competing security interests are perfected by filing, priority is governed by the time of filing.<sup>30/</sup> But Section 9-312(2)<sup>31/</sup> of the Code provides;

A perfected security interest in crops for new value given to enable the debtor to produce the crops during the production season and given not more than three months before the crops become growing crops by planting or otherwise takes priority over an earlier perfected security interest to the extent that such earlier interest secures obligations due more than six months before the crops become growing crops by planting or otherwise, even though the person giving new value had knowledge of the earlier security interest.

This section gives a priority over an original security party if the party seeking priority has given value<sup>32/</sup> to produce the current year's crops and this value was given less than three months before the crops became crops. He takes priority over another interest in crops which was secured more than six months before the crops became growing even if he knew of the prior interests, but he will not take priority over the right of the original secured party to installments due on a real estate mortgage within the last six months.<sup>33/</sup> This section only gives priority over obligations due more than six months before planting.

(2) Livestock and Products of Livestock.

Different types of livestock have different value as collateral. A dairy herd is good collateral because it depreciates slowly, it produces steady income for the farmer and because the lender can acquire a security interest in the milk products of the livestock.<sup>34/</sup>

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<sup>30/</sup> See Minn. Stat. § 336.9-312 (5) (1976).

<sup>31/</sup> Minn. Stat. § 336.9-312(2) (1976). A threshermen's lien is given certain priorities by law, but not over seed loans. Minn. Stat. § 514.65 (1976).

<sup>33/</sup> See Note, Farm Financing Under the Uniform Commercial Code, 44 N.D.L. Rev. 553, 561 (1968).

<sup>34/</sup> See Miller, Farm Collateral Under the UCC: "Those Are Some Mighty Tall Silos, Ain't They Fella?", 20 S.D.L. Rev. 514, 522 (1915).

In cattle feeding operations the security is not as stable.<sup>35/</sup>

The term "livestock" is not defined by the Code, but it clearly includes poultry<sup>36/</sup> as well as sheep, hogs and cattle. Livestock, to be farm products, must be in the possession of a debtor engaged in farming operations (fattening, raising, grazing, milking, etc.).<sup>37/</sup> If held for resale, they are inventory, not farm products.<sup>38/</sup>

The description of livestock collateral is sufficient if it reasonably identifies what is described.<sup>39/</sup> In describing livestock, the familiar practice of using color, markings and brands, ear tags, and the land on which they are located, together with the words "all ...including..." can be used.<sup>40/</sup> There should also be a reference to increases in the herd by birth.

A purchase money security interest in livestock which is a farm product is given priority over conflicting security interests in the same collateral or its proceeds if it is perfected at the time the debtor receives possession of the collateral or within 10 days thereafter.<sup>41/</sup> Although the 1972 code does not state when a debtor has rights in livestock, he probably has rights in any future increase,

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<sup>35/</sup> Id.

<sup>36/</sup> Minn. Stat. § 336.9-109 (1976), comment 4.

<sup>37/</sup> Id.

<sup>38/</sup> Minn. Stat. § 336.9-109 (4) (1976); First State Bank v. Maxfield, 485 F. 2d 71 (10th Cir. 1973). A buyer of inventory takes free of a security interest while the buyer of farm products does not. Minn. Stat. § 336.9-307(1) (1976).

<sup>39/</sup> Minn. Stat. §§ 336.9-110, -203 (1976).

<sup>40/</sup> See Goebel, The Uniform Commercial Code and the Farmer, 1962 U. Ill. L. F. 374, 384.

<sup>41/</sup> Minn. Stat. § 336.9-312(4) (1976). One court has rejected an argument that a cattle purchaser did not become a "debtor" until he received a loan from the bank, and ruled that he became a "debtor" when he received possession of the cattle without paying for them. North Platte State Bank v. Production Credit Association, 189 Neb. 44, 200 N.W. 2d 1 (1972).

and if so, the purchase money secured party will have priority in that increase.<sup>42/</sup>

Products of livestock<sup>43/</sup> are not very good security because they are frequently and regularly marketed. One writer suggests that it is advisable to get a security interest in the account arising from the sale of livestock products simultaneously with procuring a security interest in the livestock product.<sup>44/</sup> Receipts from the periodic marketing of products provides a way for the debtor to pay off his loan directly from the proceeds of the sale of his farm products. The lender needs to realize that a "milk check assignment" of this type is a security interest and that his priority in this assignment will be protected if there is a proper filing.<sup>45/</sup>

A security interest in livestock will not be invalid because the farm-debtor is free to commingle or dispose of all or part of the collateral, even without replacement, and to use or dispose of the proceeds.<sup>46/</sup>

- c. The Sale of Farm Products. The law of secured transactions is essentially one of priorities and one of the more important priority questions is that of who is entitled to priority--buyers from farmers or holders of Code security interests. The Code states that the buyer in ordinary

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<sup>42/</sup> Compare Minn. Stat. § 336.9-204 (1962 version) with Minn. Stat. § 336.9-204 (1972 version).

<sup>43/</sup> E.g., milk, eggs, sheep clippings, manure.

<sup>44/</sup> Miller, supra note 35, at 527. This writer also suggest that the secured party should obtain rights only in products with which such secured party is concerned in order to prevent the curtailing of a farmer's ability to obtain further credit, and to avoid a court reaching the result that the secured party has overreached. Id. at 527-28.

<sup>45/</sup> Miller, supra note 35, at 529.

<sup>46/</sup> Minn. Stat. § 336.9-205 (1976). The same is true of other farm products beside livestock. Id.



course<sup>47/</sup> of business<sup>48/</sup> takes free of a security interest even though the security interest is perfected.<sup>49/</sup> But the buyer who buys farm products in the ordinary course from a farmer does not come within this exception, and as a result, the secured party has priority over a purchaser.<sup>50/</sup>

Different reasons have been offered for this special treatment to lenders. One reason is that it is necessary to protect the financier in order to insure adequate financing for the farmer,<sup>51/</sup> Another reason is that the farmer is not a merchant<sup>52/</sup> selling inventory and should not be treated as one.<sup>53/</sup> Whatever the reason, it seems clear that this provision of the Code is necessary to the farm credit system.

The general rule is that a security interest continues in collateral in the hands of a purchaser.<sup>54/</sup> Since the transferee takes subject to the security interest, the secured party may repossess the collateral or maintain an action for conversion,<sup>55/</sup> With farm products, this creates some difficult problems because the farm products are frequently commingled with goods not subject to the same security interest.

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<sup>47/</sup> "Buyer in ordinary course" is defined by Minn. Stat. § 336.9-201(9) (1976).

<sup>48/</sup> "Business" is defined by Minn. Stat. § 336.9-201 (9) (1976).

<sup>49/</sup> Minn. Stat. § 336.9-307 (1) (1976).

<sup>50/</sup> *Id.*

<sup>51/</sup> Phillips, Agricultural Financing Under the U.C.C., 12 Ariz. L. Rev. 391, 411 (1970).

<sup>52/</sup> "Merchant" is defined by Minn. Stat. § 336.2-104 (1) (1976).

<sup>53/</sup> Miller, supra note 35, at 536. For further discussion of whether farmer is a merchant, see Ch. III, § B.1., *infra*.

<sup>54/</sup> Minn. Stat. § 336.9-306 (2) (1976).

<sup>55/</sup> Minn. Stat. § 336.9-306 (1976), comment 3. There are 4 possible exceptions to the rule that an unauthorized sale of farm products results in a conversion: (a) a 9-311 argument that the sale is a transfer of debtor's rights, (b) an argument that a transfer by negotiable warehouse receipt defeats a perfected security interest, (c) an argument that the sale is a sale to a buyer in the ordinary course of business, and (d) a 9-306 (2) argument concerning disposition of farm products by one other than the debtor. Miller, supra note 35, at 539-42.

Obtaining a security interest in the proceeds is not an implies authorization to sell nor does it constitute a waiver under the 1972 Code.<sup>56/</sup> The right to proceeds is automatic without reference to the term in the security agreement.<sup>57/</sup> The right to proceeds does not in itself constitute an authorization of sale.<sup>58/</sup>

Security agreements usually prohibit the sale of farm products without the written consent of the secured party. In actual practice, however, the farmer frequently sells some or all of his secured farm products in the ordinary course of business. An important case on the issue of who is entitled to priority (buyer or secured party) is Clovis National Bank v. Thomas.<sup>59/</sup> In Clovis, the bank's security agreement forbade the sale of farm products collateral without the bank's written permission, but the bank did not enforce this requirement. The New Mexico Supreme Court accepted the waiver theory--uninterrupted acquiescence--and implied the consent of the bank to the sale of the collateral.<sup>60/</sup>

Some courts have agreed with Clovis and held that when the creditor relies more on the proceeds than on the farm products themselves, this implied acquiescence is enough to waive the security interest.<sup>61/</sup> Other courts require a decisive act to negate a debtor's agreement, and hold

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<sup>56/</sup> The same result was reached under the 1962 Code in Vermillion County Production Credit Association v. Izzard, III 111, App.2d190,249N.E,2d352(1969).

<sup>57/</sup> Minn. Stat. § 336.9-203 (3) (1976).

<sup>58/</sup> Minn. Stat. § 336.9-306 (1976), comment 3.

<sup>59/</sup> 77 N.M. 554, 425 p. 2d 726 (1967) (conversion action against Purchaser)

<sup>60/</sup> The court used three sections of the U.C.C. to reach this result: 9-306(2) (consent), 1-205 (course of dealing) and 1-103 (waiver). The Clovis result was adopted by the Iowa Supreme Court in Hedrick Savings Bank v. Myers, 229 N.W. 2d 252 (Iowa 1975).

<sup>61/</sup> E.g., United States v. Central Livestock Ass'n, Inc., 349 F. Supp. 1033 (D.N.D. 1972); Hedrick Savings Bank, supra, note 60; Central Washington Production Credit Ass'n v. Baker, 11 Wash. App. 17, 521 p. 2d 226 (1974).

that an express contract term controls over a course of dealing.<sup>62/</sup>

Minnesota does not have a case directly on point on this issue.<sup>63/</sup>

The better reasoned result appears to be limiting the Clovis decision.

For one thing, Clovis is contrary to the Code policy that a farmer does not have the power to sell farm products free of a security interest.<sup>64/</sup>

It undermines the Code's attempt to make credit readily available to farmers. Lenders should not be penalized for accomodating the farm borrower by foregoing formalities such as written consent to every single transaction involving a secured farm product. The law should be flexible enough to recognize that persons who loan money to farmers often rely on the good faith of the farm borrower. It is relatively easy for the buyer of farm products to protect himself, while the lender has no way of knowing when or to whom the farmer might sell.<sup>65/</sup>

d. Farm Equipment. The difinition of equipment is primarily a negative one: goods used in a business (including farming) which are not inventory and not farm products.<sup>66/</sup> Typical examples are trucks, rolling stock, tools

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<sup>62/</sup> Garden City Production Credit Ass'n v. Lannan, 186 Neb. 668, 186 N.W. 2d 99 (1971); see Vermillion County Production Credit Ass'n v. Izzard, III Ill. App. 2d 190, 249 N.E. 2d 352 (1969).

<sup>63/</sup> Minnesota does have a case in which the court favors the mortgagee over the mortgagor of farm products, but it does not involve conflict with a purchaser. See Doughboy Industries, Inc. v. Turkwood, Inc., 281 Minn. 140, 160 N.W. 2d 713 (1968). A Minnesota case has held that holding a market agency liable in conversion for the sale of mortgaged steers does not burden interstate commerce or deprive the agency of its property and of the equal protection of the law. Mason City Production Credit Ass'n v. Sig Ellingson & Co., 205 Minn. 537, 286 N.W. 713 (1939), cert. denied 308 U.S. 599 (1939). But this does not settle the question of whether a course of dealing can result in waiver of an express requirement not to transfer collateral.

<sup>64/</sup> Minn. Stat. § 336.9-307 (1) (1976); see Miller, supra note 35, at 546.

<sup>65/</sup> See Kaufman, supra note 6, at 252-53.

<sup>66/</sup> Minn. Stat. § 336.9-109 (1976), comment 5. Any goods which are not covered by one of the other definitions in 9-109 is treated as equipment. Id.

and machinery.<sup>67/</sup> The modern farmer has become increasingly reliant on machinery or "equipment."

The filing requirements for obtaining a security interest in farm equipment is different than the filing requirement for nonfarm equipment even though the 1972 version of the Code has deleted an exemption from filing for purchase money security interests in farm equipment under \$2500.<sup>68/</sup>

A financing statement covering "equipment used in farming operations" should be filed in the county of residence of the debtor.<sup>69/</sup> The residence of a farm corporation is its place of business, if it has only one, or its chief executive office, if it has more than one place of business.<sup>70/</sup> Filing for nonfarm equipment is with the Secretary of State.<sup>71/</sup>

Whether something is farm equipment depends upon the use to which it is put.<sup>72/</sup> For example, a combine owned by a custom harvester who owns no land is farm equipment because it is used in farming operations.<sup>73/</sup> But a piece of equipment normally thought of as farm equipment may not be farm equipment if it is used in an operation other than farming. If the lender is in doubt, he should file in the county of residence of the debtor and with the Secretary of State.

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<sup>67/</sup> Minn. Stat. § 336.9-109 (1976), comment 5.

<sup>68/</sup> Compare Minn. Stat. §§ 336.9-302, -307(2) (1976) with Minn. Stat. §§ 336.9-302, -307 (1974).

<sup>69/</sup> Minn. Stat. § 336.9-401(1). Note that this is the same place where financing statements on farm products will be filed, but that when the collateral is crops, the filing is in the county where the crops are grown. Id.

<sup>70/</sup> Minn. Stat. § 336.9-401 (6) (1976).

<sup>71/</sup> Minn. Stat. § 336.9-401(1) (1976).

<sup>72/</sup> Minn. Stat. § 336.9-109 (1976), comment 2.

<sup>73/</sup> Sequoia Machinery, Inc. v. Jarrett, 410 F.2d 1116(9th Cir, 1969).

As with other collateral, a description of farm equipment is sufficient if it reasonably identifies what is described,<sup>74/</sup> General terms such as "all farm equipment" may not be enough.<sup>75/</sup> Additional specificity may prevent future problems.

Filing is not required to perfect a purchase money security interest in consumer goods unless the item in question is a motor vehicle required to be registered.<sup>76/</sup> For a discussion of what farm vehicles are required to be registered, see Ch. I, § B. 2. b., supra.

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<sup>74/</sup> Minn. Stat. §§ 336.9-110, -203, (1976).

<sup>75/</sup> See Mamouth Cave Production Credit Ass'n v. York, 429 S.W.2d 26 (Ky. 1968); In Re Anselm, 344 F. Supp. 544 (W.D. Ky. 1972); but see Maryland National Bank v. Porter-Way Harvester Mfg. Co., 300 A.2d 8 (Del. 1972).

<sup>76/</sup> Minn. Stat. § 336.9-302 (1) (d) (1976).

#### 4. Family Farm Security Program

The purpose of the Family Farm Security Program<sup>1/</sup> is to aid farmers in obtaining credit for the acquisition of farm real estate.<sup>2/</sup> The program provides state money to guarantee loans.<sup>3</sup> It is administered by the Commissioner of Agriculture (hereinafter Commissioner).<sup>4/</sup> An advisory council<sup>5/</sup> has been established to review and appraise the program, to advise the Commissioner on the program, to review applications and to make recommendations regarding state policy and program changes to promote the family farm.<sup>6/</sup>

A family farm security loan approval may be granted if:<sup>7/</sup>

- (a) The applicant is a Minnesota resident, or intends to become one;
- (b) The applicant has sufficient education, training or experience in the type of farming for which he has requested the loan, and continued participation in a farm management program approved by the Commissioner for the duration of the loan;
- (c) The applicant, his dependents and his spouse have a total net worth of less than \$50,000 and have a need for the loan;

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<sup>1/</sup> Minn. Stat. §§ 41.51-.61 (1976).

<sup>2/</sup> Minn. Stat. § 41.51 (1976).

<sup>3/</sup> Id.

<sup>4/</sup> Minn. Stat. § 41.53 (1) (1976).

<sup>5/</sup> The advisory council consists of 7 members appointed by the Commissioner of Agriculture. Minn. Stat. § 41.54 (1976). The 7 member board is composed of 2 officers of commercial lending institutions, a dairy farmer, a livestock farmer, a cash grain farmer, a officer from a farm credit association and an agricultural economist. Id.

<sup>6/</sup> Minn. Stat. § 41.54 (1976).

<sup>7/</sup> Minn. Stat. § 41.55 (1976).

- (d) The applicant intends to purchase farm land <sup>8/</sup> to be used by him for agricultural purposes;
- (e) The applicant is credit worthy;<sup>9/</sup>
- (f) The seller has not acquired the land to obtain the income tax exemptions allowed by Minn. Stat, §§ 41.58 (seller sponsored loans), 290.01 (20) (definition of gross income).

(1) Procedure.<sup>10/</sup>

Any person who wants to buy farmland may apply with a lender for a family farm security loan. This is forwarded to the Commissioner of Agriculture for approval. If the application is denied, it will be returned with a written statement of the reasons for the denial. If the application is approved, the applicant and lender may then complete the loan transaction.

If there is a default, the lender must notify the applicant within 90 days of such default that if the default continues for 180 days, the Commissioner of Agriculture must be notified. If the applicant continues in default, after 180 days the lender will file a claim with the Commissioner, identifying the loan and the nature of the default, and assigning the state all of the lender's security and interest in the loan in exchange for payment according to terms of the

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<sup>8/</sup> "Farm land" means "land in Minnesota that is capable of supporting the commercial production of agricultural crops, livestock or livestock products, poultry products, milk or dairy products, or fruit or other horticultural products." Minn. Stat. § 41.52 (6) (1976).

<sup>9/</sup> Credit worthy according to a standard prescribed by the Commissioner of Agriculture. Minn. Stat. § 41.55 (1976).

<sup>10/</sup> Minn. Stat. § 41.56 (1976), as amended by Act of May 19, 1977, ch. 170, §§ 4, 5, 1977 Minn. sess. Law Serv. (West).

guarantee. If it is a seller-sponsored loan,<sup>11/</sup> the seller may pay the Commissioner all sums owed by the applicant and retain title to the property. If the terms of the guarantee have been met, the Commissioner will authorize payment of state funds to the lender, and then notify the defaulting party. At this point, the state becomes the holder of the mortgage and the Commissioner may foreclose.

If the state acquires title to the property, the Commissioner will sell the property (with published notice, etc.). Once sold and the purchaser has paid for the property, the Commissioner will transfer title to the purchaser by quit claim deed,

(2) Terms of the Loan,<sup>12/</sup>

The Commissioner must have the property involved appraised to determine the value and income potential of the property before guaranteeing a loan, and no guarantee will be made if the purchase price exceeds the appraisal value.

A family farm security loan is eligible for a payment adjustment if it has a maximum term of 20 years and provides for payments at least annually so that the loan will be amortized over its term with equal annual payments of principal and interest (except that a loan to be amortized over 10 years or less need not provide for equal annual payments of principal and interest). Under a payment adjustment, during the first ten years of a loan, the Commissioner pays the

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<sup>11/</sup> "Seller-sponsored loan" means a "loan in which all or part of the purchase price of the farm is financed by a loan from the seller of the property who is a natural person or a family farm corporation..." and the remainder of the loan is provided by a "lender". Act of May 19, 1977, ch. 170, § 2, 1977 Minn. Sess. Law Serv. (West), amending Minn. Stat. § 41.52 (8) (1976).

<sup>12/</sup> Minn. Stat. § 41.57 (1976) as amended by Act of May 19, 1977, ch. 170, § 6, 1977 Minn. Sess. Law Serv. (West).



lender 4% of the balance due at the beginning of the year and the applicant pays the remainder of the payment due. After the 10th year, the applicant makes payments according to the stated interest rate, and he must reimburse the Commissioner during the 11th year for the sums paid on his behalf. This obligation to repay is a lien against the property. Upon petition, the payment adjustment may be renewed for a second 10 year period.

If the applicant is receiving a payment adjustment, he must annually submit a statement of his, his dependents and his spouse's net worth to the Commissioner. If their net worth in any year exceeds \$100,000, the applicant is not eligible for a payment adjustment in that year.

(3) Sale or Conveyance,<sup>13/</sup>

When an applicant sells or conveys property for which a family farm security loan was issued, he must retire the entire indebtedness still owed the lender and the Commissioner. The purchaser may negotiate a family farm security loan of his own, but the original loan may not be assumed by the new owner.

If the applicant fails to maintain the land covered by a family farm security loan in active agricultural production for more than one year, he is in default. This default may be waived by the Commissioner in the event of a physical disability or other extenuating circumstances.

The capital gain tax on the sale of property for which a family farm loan has been issued depends upon the number of years which have passed since the issuance of the loan. If the property has been held

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<sup>13/</sup> Minn. Stat. § 41.59 (1976).

for 10 years after the issuance of the loan, the tax is as imposed by Chapter 290 of the Minnesota Code. If held for less than 10 years, the tax imposed by chapter 290 is imposed on the following percentages of gain realized:<sup>14/</sup>

<u>Held</u>	<u>Percent</u>
0-1 year	100
1-3 years	90
3-5 years	80
5-7 years	70
7-9 years	60
9-10 years	50

Chapter 190 applies when the applicant has realized a loss on the sale of the property.

This additional penalty tax will be waived by the Commissioner of Revenue if the applicant has died or suffered a total disability.<sup>15/</sup>

(4) Discrimination Prohibited.

The Commissioner is prohibited from discriminating between applicants because of race, color, creed, religion, national origin, sex, marital status, disability, political or ideological persuasion.<sup>16/</sup>

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<sup>14/</sup> Income tax is not usually imposed at 100% of the capital gain realized, so that this tax is a penalty.

<sup>15/</sup> "Total disability", as used here, means "the total and permanent loss of sight of both eyes, the loss of both arms at the shoulder, the loss of both legs so close to the hips that no effective artificial members can be used, complete and permanent paralysis, total and permanent loss of mental faculties, or any other injury which totally incapacitates the applicant from working his farm." Minn. Stat. § 41.59 (3) (1976).

<sup>16/</sup> Minn. Stat. § 41.60 (1976).

## 5. County Seed and Feed Loans

Minnesota still has on its books laws enabling counties to lend money to farmers to purchase seed and feed for their teams if there has been a crop failure.<sup>1/</sup> The loan applicant must own land (which includes holding under a contract for deed) which was under cultivation and cropped the previous year and which is capable of being cropped the ensuing year, and must be unable to procure seed for planting the land and feed for his teams, the result of which is imminent danger of loss of the property.<sup>2/</sup> Twenty-five resident freeholders of the county must petition the County Audit or before March 1st of the year following the crop failure asking the county to lend money to residents suffering by reason of the crop failure.<sup>3/</sup> The County Board will consider the petition, but is not authorized to exceed the amount of indebtedness fixed by the laws.<sup>4/</sup>

Any resident freeholder of the county may apply for feed or seed or either of them by filing with the County Auditor an application which includes, among other things, the number of horses or oxen owned by the applicant.<sup>5/</sup> Not more than 200 bushels of seed can be furnished to any one person.<sup>6/</sup>

Both the County Auditor and the County Attorney are required to attend all County Board meetings involving consideration of these type loans and to "give the board the benefit of all information they may

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<sup>1/</sup> Minn. Stat. §§ 395.14-.24 (1976).

<sup>2/</sup> Minn. Stat. § 395.14 (1976).

<sup>3/</sup> Id.

<sup>4/</sup> Id.

<sup>5/</sup> Minn. Stat. § 395.15 (1976).

<sup>6/</sup> Minn. Stat. § 395.16 (1976). If more grain is applies for than can be supplies, a pro rata distribution is made among those who have been found entitled to benefits. Minn. Stat. § 395.24 (1976). The board has the right to refuse any application which it may deem improper to grant! Id.

have relative to the applicants."<sup>7/</sup> The applicant is required to repay the county before October 1st, with an interest rate of 6%.<sup>8/</sup> The county acquires a lien upon the crops of grain raised by the person receiving the seed or feed.<sup>9/</sup> The applicant is required to market enough of the crop immediately after harvest to pay off the loan.<sup>10/</sup>

Whoever violates the provisions of the law related to seed and feed loans<sup>11/</sup> is guilty of a misdemeanor and must pay the costs of prosecution.<sup>12/</sup>

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- <sup>7/</sup> Minn. Stat. § 395.17 (1976).  
<sup>8/</sup> Minn. Stat. § 395.18 (1976).  
<sup>9/</sup> Minn. Stat. § 395.19 (1976).  
<sup>10/</sup> Minn. Stat. § 395.21 (1976).  
<sup>11/</sup> Minn. Stat. § 395.14-.24 (1976).  
<sup>12/</sup> Minn. Stat. § 395.22 (1976).

6. Fraud in Obtaining Credit, Defeating Security

Just as with other borrowers, it is a crime for the farmer to use fraud to obtain credit for himself.<sup>1/</sup> If no loan is obtained as a result of fraudulent conduct, the borrower has committed a misdemeanor; if money or property is obtained, the sentence will depend upon the value of the property obtained.<sup>2/</sup>

It is also a crime to remove or damage real property which is subject to a mortgage, mechanic's lien, or contract for deed, with intent to impair the value of the security, without the consent of the security holder.<sup>3/</sup> If the property is impaired by \$100 or less, it is a misdemeanor; if impaired by more than \$100, the perpetrator can be fined \$5000, imprisoned for five years, or both.<sup>4/</sup>

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<sup>1/</sup> Minn. Stat. § 609.82 (1976). There must be intent to defraud by means of a present or past false representation as to the borrower's or another's financial ability. Id.

<sup>2/</sup> Minn. Stat. § 609.82 (1976). If money is obtained, the sentences will be determined by Minn. Stat. §§ 609.52 (1) (3), (3) (1976). Id.

<sup>3/</sup> Minn. Stat. § 609.615 (1976). However, it is not a crime to sell timber on mortgaged land. Op. Atty. Gen., 27-G, Nov. 18, 1943.

#### E. Water Law

Water, that cold moist liquid which descends from clouds to form lakes and rivers and which is essential to life, is equally as essential to agriculture. Its principal importance to agriculture is in irrigation and in livestock watering, but it is also important in cleaning. Water is also an essential element of food processing. Control of the flow of water is important in the prevention of soil erosion, and consequently, in minimizing water pollution.

Water law affects the allocation and use of available water. In Minnesota, unlike many semi-arid states, water rights are essentially a peripheral aspect of real property law.<sup>1/</sup> Because of the state's relative abundance of water, most of the water law deals with drainage and flood control.

This section of the outline addresses eight separate topics: (1) Riparian doctrine, (2) Water conservation efforts, (3) Drainage, (4) Soil and water conservation districts, (5) Drainage and conservation districts, (6) the Watershed Act and watershed districts, (7) Water pollution from non-point sources, and (8) miscellaneous statutes relating to water and agriculture. One thing the reader will observe is the similarity of some of the topics discussed. This is a function of extensive overlap in Minnesota water law. At the same time, one region of Minnesota could be within a number of different water districts, all with similar and overlapping purposes. The responsibility for achieving water conservation and use objectives at the local level is equally as diffuse. It appears that comprehensive revision of the law, rather than piecemeal revision is in order.

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<sup>1/</sup> See 1 Clark, Waters and Water Rights § 4.1 (1967). In many western states, water and land law are separated. Id. The West begins where the average annual rainfall drops below twenty inches. When you reach the line that marks that drop...you have reached the West." Bernard DeVoto, "The Plundered Province," Harper's Magazine, August, 1934.

1. Riparian Rights<sup>1/</sup>

The farmer, if he owns land through which water flows, is a riparian owner and as such is entitled to certain rights in those waters. In Minnesota, such a farmer is regarded as having a privilege to use the water for any beneficial purpose if such purpose is reasonable in respect to other riparian owners on the stream, and does not interfere with their beneficial uses.<sup>2/</sup> This is called the "reasonable use" doctrine.<sup>3/</sup> A use is reasonable if it does not cause harm to or inconvenience another; a use is always privileged when it causes no harm.<sup>4/</sup>

The determination of whether a use is reasonable or unreasonable is a question of fact to be determined by court or jury on the facts of each particular case.<sup>5/</sup> When an upper stream riparian owner uses a stream in such a manner that it appears to interfere with the reasonable use of a downstream riparian owner, the burden is on the upstream user to show that his use is reasonable.<sup>6/</sup>

A riparian owner's title extends to the low-water mark of navigable waters.<sup>7/</sup> The ownership of beds and lands under waters of rivers navigable for commercial purposes is in the state of Minnesota.<sup>8/</sup> In civil litigation involving the navigability of a body of water, or the ownership of the bed

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<sup>1/</sup> "Riparian rights" can be defined as the rights of a person owning land containing or bordering on a watercourse in the water, the bank or the underlying bed. Websters New International Dictionary (2nd Ed.).

<sup>2/</sup> Red River Roller Mills v. Wright, 30 Minn. 249, 15 N.W. 167 (1883).

<sup>3/</sup> The other major doctrine is the "natural flow" doctrine which, in general terms, affords the landowner the right to have streams continue to flow undiminished in quality or quantity. See Kinyon, What Can a Riparian Proprietor Do? 21 Minn. L. Rev. 512, 517 (1937).

<sup>4/</sup> Meyers v. Lafayette Club, 197 Minn. 241, 266 N.W. 861 (1936).

<sup>5/</sup> E.g., Crookston Water Works Power & Light Co. v. Sprague, 91 Minn. 461, 98 N.W. 420 (1904).

<sup>6/</sup> Red River Roller Mills v. Wright, 30 Minn. 249, 15 N.W. 167 (1883).

<sup>7/</sup> Head v. Slotness, 289 Minn. 485, 185 N.W. 2d 530 (1971).

<sup>8/</sup> Minn. Stat. § 465.18 (1976).

thereof, the Commissioner of Natural Resources is authorized to agree with parties to the action on the location of the low-water mark, and this may be included in the final judgment.<sup>9/</sup>

To summarize, a farmer may make any use of water flowing through his property which is reasonable, if it does not interfere with the reasonable use of another riparian owner on that particular stream, subject to certain limitations which are described in the succeeding sections (e.g., requirement for a permit if using over 10,000 gallons per day).

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<sup>9/</sup> Minn. Stat. § 84.032 (1976).



## 2. Water Resources, Conservation

In order to conserve and utilize the water resources of the state in the best interests of the people of the state, and for the purpose of promoting the public health, safety and welfare, it is the policy of the State of Minnesota that, subject to existing rights, all waters of the state which serve a material beneficial public purpose <sup>1/</sup> are public waters subject to the control of the state. <sup>2/</sup>

- a. Priorities of Water Use. To facilitate the fulfillment of the above stated objectives, certain priorities for appropriation and use of water have been established. <sup>3/</sup> First priority is given to domestic water supply, excluding industrial and commercial uses of municipal water supply. <sup>4/</sup> Second priority is given any use of water, including agricultural use, which involves consumption of less than 10,000 gallons per day. <sup>5/</sup> Agricultural irrigation involving consumption in excess of 10,000 gallons per day, and the processing of agricultural products, is given third priority. <sup>6/</sup> Prior to June 2, 1977, agricultural irrigation involving consumption in excess of 10,000 gallons per day was given a first priority. <sup>7/</sup>

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<sup>1/</sup> "Beneficial public purpose" is defined to include, among other purposes, the following purposes: (a) water supply for agricultural purposes, and (b) retention of water to minimize erosion. Minn. Stat. § 105.37 (6) (1976). In determining whether a beneficial public purpose exists, evidence of land use, soil types, and relative agricultural productivity will be evaluated. Minn. Stat. § 105.38 (1) (1976).

<sup>2/</sup> Minn. Stat. § 105.38 (1976).

<sup>3/</sup> See, Minn. Stat. § 105.41 (1a) (1976), as amended by Act of March 16, 1978, ch. 505, § 2, 1978 Minn. Sess. Law Serv. (West).

<sup>4/</sup> Act of March 16, 1978, ch. 505, § 2, 1978 Minn. Sess. Law Serv. (West), amending Minn. Stat. § 105.41 (1a) (1976).

<sup>5/</sup> Id. Consumption means water withdrawn from a supply which is lost for immediate further use in the area. Id.

<sup>6/</sup> Act of March 16, 1978, ch. 505, § 2, 1978 Minn. Sess. Law Serv. (West), amending Minn. Stat. § 105.41 (1a) (1976). The fourth priority is power production and the fifth priority is other uses. Id.

b. Irrigation of Agricultural Land.

To further facilitate fulfillment of water conservancy objectives, a permit from the Commissioner of Natural Resources is required before any use can be made of the waters of the state.<sup>8/</sup> When applying for a permit to irrigate agricultural land from public waters, a statement of the purpose of the proposed use and the acreage to be irrigated is sufficient compliance with the requirements<sup>9/</sup> with respect to maps, plans and specifications.<sup>10/</sup> The Commissioner will grant the application, after a proper hearing, unless he finds that granting it would be against the public interest or would deprive another of the share of public water which such other has requested and to which he is entitled.<sup>11/</sup> If the Commissioner fails to grant or deny (or other hearing thereon) an application within 30 days after the filing of the application, or if the Commissioner has requested additional specified information, within 20 days after the filing of such information, the application is deemed granted.<sup>12/</sup>

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<sup>8/</sup> Minn. Stat. § 105.41 (1), as amended by Act of June 2, 1977, ch. 446, § 3, 1977 Minn. Sess. Law Serv. (West). This does not apply to the use of water for domestic purposes serving less than 25 persons. Id.

<sup>9/</sup> The requirements are provided by Minn. Stat. § 105.44(1)(1976).

<sup>10/</sup> Minn. Stat. § 105.44 (8) (1976), as amended by Act of May 19, 1977, ch. 162, § 5, 1977 Minn. Sess. Law Serv. (West), as amended by Act of June 2, 1977, ch. 446, § 12, 1977 Minn. Sess. Law Serv. (West).

<sup>11/</sup> Id. Hearing must be conducted as prescribed by chapters 15 and 105 of the Minnesota Code. Id.

<sup>12/</sup> Minn. Stat. § 105.44 (8) (1976), as amended by Act of May 19, 1977, ch. 162, § 5, 1977 Minn. Sess. Law Serv. (West), as amended by Act of June 2, 1977, ch. 446, § 12, 1977 Minn. Sess. Law Serv. (West).

### 3. Drainage Systems

County boards and district courts are authorized to construct and maintain public drainage system, also known as drainage ditches.<sup>1/</sup> (But as of June 30, 1977, any judicial ditch or drainage becomes a joint county ditch or drainage system.<sup>2/</sup> Although Minn. Stat. § 106.021 (1) has not been amended to take away from district courts the authorization to construct and maintain drainage systems, the implication of chapter 135, section 1 of the 1977 Minnesota Session Laws is that courts no longer have this power.) In evaluating a proposed drainage system, the county board (or district court) will consider the following criteria:<sup>3/</sup>

- a. Private and public benefits and costs to be derived;
- b. Present and anticipated agricultural land acreage availability and use within the project;
- c. Flooding characteristics of the land involved;
- d. Alternative measures for conservation and development of of drainage waters;
- e. Water quality effect of the project;
- f. Fish and wildlife resources affected;
- g. Shallow ground water availability and distribution;
- h. Environmental impact;
- i. Present and anticipated land use with the project area.

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<sup>1/</sup> Minn. Stat. § 106.021 (1) (1976). A "drainage system" means: (a) an open or tiled systems and all laterals thereof, (b) the improvement of a natural waterway, (c) the adoption and inclusion in any drainage project of an overall plan for flood control as proposed by the federal government or one of its agencies, (d) any work, excavation, structure or improvement necessary to complete a system as adopted or ordered by a court or county board. Minn. Stat. § 106.011 (17) (1976).

<sup>2/</sup> Act of May 19, 1977, ch. 135, § 1, 1977 Minn. Sess. Law Serv. (West), amending Minn. Stat. § 106.015 (5) (1976).

<sup>3/</sup> Minn. Stat. § 106.021 (1) (1976).

The legislative authority to enact drainage laws is derived from the police power, the right to eminent domain, or the taxing power, and is founded upon the right of states to protect the public health and to provide for the public convenience and welfare.<sup>4/</sup> The legislature has determined that the reclamation of wasteland through construction of public drainage ditches is of public benefit.<sup>5/</sup> Because of this, the Minnesota Supreme Court has rejected an argument that in the economic setting of surplus food production, the conversion of wetland to tillable farmland no longer creates a public benefit, but merely creates a private benefit.<sup>6/</sup>

a. Petitions.

To construct a public drainage system, a petition must be filed with the County Auditor.<sup>7/</sup> The petition must be signed by a majority of the resident owners<sup>8/</sup> of the land described in the petition or by the owners

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<sup>4/</sup> Nostdal v. Watonwan County, 221 Minn. 376, 386, 22 N.W.2d 461 (1946). But see Johnson v. Steele County, 240 Minn. 154, 60 N.W. 2d 32 (1953); Petition of Droesch, 233 Minn. 274, 47 N.W. 2d 106 (1951) (public drainage proceedings invoke the power of eminent domain, not the police power, so the right to compensation is absolute).

<sup>5/</sup> See Minn. Stat. § 106.011 (14) (1976). A finding of public benefit is required by Minn. Stat. § 106.201 (2) (1976).

<sup>6/</sup> Titrud v. Achterkirch, 298 Minn. 68, 213 N.W. 2d 408 (1973).

<sup>7/</sup> Minn. Stat. § 106.031 (1) (1976).

<sup>8/</sup> A "resident" owner means an actual resident of the land described in the petition and residence within the county is not sufficient. Op. Atty. Gen., 83, Feb. 21, 1939; Op. Atty. Gen., 602-I, Feb. 21, 1939. "Owners" refers to general and beneficial owners whose interest is primarily possessory, so does not include mortgagees or contract for deed vendors. Petition of Brandt, 241 Minn. 180, 62 N.W. 2d 816 (1954). "Resident owner" includes any person having a substantial interest in realty whether it is entire or undivided, in common or joint. Op. Atty. Gen., No. 5, p. 27, 1948. Owners also includes the state, cities and power associations. Op. Atty. Gen., No. 7, p. 36, 1952; Op. Atty. Gen., 602-I, Nov. 26, 1952; Op. Atty. Gen., 602-i, July 18, 1956.

of 60% of the land area described in the petition.<sup>9/</sup> If the proposed drainage system is in two or more counties, the petition should be filed in the county with the largest area of land over which the proposed ditch passes.<sup>10/</sup>

b. Benefits and Damages.

Viewers are appointed to, with or without the engineer,<sup>11/</sup> determine the benefits or damages to all property affected by the proposed drainage system and make a report thereon.<sup>12/</sup> Before land can be assessed for benefits in a public drainage proceeding, it must be shown that the land will actually receive benefits from the proposed drainage project.<sup>13/</sup> The possibility of benefits accruing to land from the availability of an outlet for a yet to be constructed lateral to a prospective ditch is too speculative to be a basis for assessment.<sup>14/</sup>

Once an owner of land within a drainage system has been assessed for benefits derived from its construction, he has a vested property right in the maintenance of the system in the same condition as when it was originally established.<sup>15/</sup> When a benefit is derived and the land assessed, the landowner's interest in the drainage system becomes a property right appurtenant to the land which cannot be taken or impaired without due process of law.<sup>16/</sup>

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<sup>9/</sup> Minn. Stat. § 106.031 (1) (1976).

<sup>10/</sup> Minn. Stat. § 106.015 (1) (1976).

<sup>11/</sup> An engineer is appointed within 30 days of the filing of a petition to make a preliminary survey. Minn. Stat. § 106.071 (1976).

<sup>12/</sup> Minn. Stat. §§ 106.141, .151 (1976).

<sup>13/</sup> *Petition of Hoepner*, 241 Minn. 6, 62 N.W. 2d 80 (1954).

<sup>14/</sup> *Id.*

<sup>15/</sup> *Fischer v. Town of Albin*, 258 Minn. 154, 104 N.W. 2d 32 (1960).

<sup>16/</sup> *Lupkes v. Town of Clifton*, 157 Minn. 493, 196 N.W. 666 (1924).

After the filing of the viewer's report and a report by the Director of the Division of Waters, Soils and Minerals of the Department of Natural Resources, a hearing is conducted.<sup>17/</sup> If the benefits exceed total cost, then a drainage system is established; if not, the petition is dismissed.<sup>18/</sup> The order of a county board establishing a county ditch is res judicata, and the proceeding cannot be collaterally attached.<sup>19/</sup>

If a ditch is ordered established, the contract for construction is let by bid.<sup>20/</sup> If none of the bids come in at less than 30% over the engineer's estimate, special procedures have to be followed.<sup>21/</sup>

If changes occur so that a land owner is no longer receiving benefits from a drainage system, he may petition the board for an order setting the property out of the drainage system.<sup>22/</sup> This, however, will not release him from any prior incurred expense.<sup>23/</sup>

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<sup>17/</sup> Minn. Stat. § 106.171 (1976); see Minn. Stat. § 106.191 (1976).

<sup>18/</sup> Minn. Stat. § 106.201 (1976); Hagen v. Martin County, 253 Minn. 367, 91 N.W. 2d 657 (1958). A dismissal relinquishes all jurisdiction. Kalman v. Grant County, 167 Minn. 458, 209 N.W. 638 (1926).

<sup>19/</sup> Slosser v. Great Northern Ry. Co., 218 Minn. 327, 16 N.W. 2d 47 (1944).

<sup>20/</sup> See Minn. Stat. § 106.231 (1976).

<sup>21/</sup> See Minn. Stat. § 106.241 (1976).

<sup>22/</sup> Minn. Stat. § 106.651 (1976).

<sup>23/</sup> Id. See Minn. Stat. § 106.661 for proceedings for abandonment.

#### 4. Soil and Water Conservation

It is the policy of the state of Minnesota to encourage land occupiers to conserve soil and water resources by implementing practices that reduce or prevent erosion, sedimentation and agriculturally related pollution in order to preserve natural resources, insure continued soil productivity, control floods, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, preserve wildlife, protect the tax base and protect public lands.<sup>1/</sup> Improper land-use practices in the past have caused serious wind and water erosion problems.<sup>2/</sup> Such practices have also caused the runoff of polluting materials, increased costs to maintain agricultural productivity, increased energy costs and increased flood damage.<sup>3/</sup> Land occupiers have a responsibility to implement practices which correct these conditions and conserve the soil and water resources of the state.<sup>4/</sup>

To accomplish these purposes, chapter 40 of the Minnesota Code provides for the establishment of soil and water conservation districts.<sup>5/</sup> Also established, to serve as an agency within the Department of Natural Resources, is a state Soil and Water Conservation Board.<sup>6/</sup> Recent legislation

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<sup>1/</sup> Act of May 27, 1977, ch. 304, § 3, 1977 Minn. Sess. Law Serv. (West), amending Minn. Stat. § 40.02 (1976).

<sup>2/</sup> Id.

<sup>3/</sup> Id.

<sup>4/</sup> Id.

<sup>5/</sup> A "soil and water conservation district" is a governmental of the state organized pursuant to chapter 40 for the purposes set forth in paragraph first, above, and with the powers and restrictions set forth in chapter 40. Minn. Stat. § 40.01 (2) (1976). All soil conservation districts are now soil and water conservation districts. See Minn. Stat. § 40.005 (1976).

<sup>6/</sup> See Act of May 27, 1977, ch. 304, §§ 4, 5, 6, 7, 1977 Minn. Sess. Law Serv. (West), amending Minn. Stat. § 40.03 (1976). The Board is made up of 12 members --7 elected and 5 ex-officio. Id. Powers and duties of the Board include coordination of activities of the districts, public information programs, classifying soil types, research, and establishment of priorities of problem areas. Id.

requires this Board to prepare a program plan to use in decisions to allocate funds to the districts.<sup>7/</sup> The Board is authorized to allocate funds to districts to share the cost of implementing any system or practices for erosion control or water quality improvement which are designed to protect the state's resources.<sup>8/</sup> A district board may contract on a cost share basis to furnish financial aid to a land occupier or a state agency for the implementation of permanent systems for erosion control and water quality improvement.<sup>9/</sup>

a. Formation of Soil and Water Conservation Districts.

A soil and water conservation district is formed when 25 land occupiers within an area petition the state Soil and Water Conservation Board asking that a soil and water conservation district (hereafter district) be organized in the territory described in the petition.<sup>10/</sup> Within 30 days, the State Board will conduct a hearing addressing such questions as desirability and necessity, the appropriate boundaries and the propriety of the petition and other proceedings.<sup>11/</sup> The Board must also decide whether the operation of a district within the boundaries decided upon is administratively practical and feasible.<sup>12/</sup> To assist

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<sup>7/</sup> See Act of May 27, 1977, ch. 304, § 8, 1977, Minn. Sess. Law Serv. (West), to be codified as Minn. Stat. § 40.035.

<sup>8/</sup> Act of May 27, 1977, ch. 304, §§ 9, 24, 1977 Minn. Sess. Law Serv. (West), to be codified as Minn. Stat. § 40.036 (State has appropriated \$3 million).

<sup>9/</sup> Id. The land occupier is liable for monetary damages up to the amount of financial assistance if he fails to complete or maintain the systems or practices. Id.

<sup>10/</sup> Minn. Stat. § 40.04 (1) (1976). The petition must set forth: (a) the proposed name of the district, (b) that there is a need, (c) a description of the territory, and (d) a request that a district be created. Id. For discontinuance of a district, see Minn. Stat. § 40.14 (1976).

<sup>11/</sup> Minn. Stat. § 40.04 (2) (1976). This statute also prescribes the criteria to be considered in establishing boundaries.

<sup>12/</sup> Minn. Stat. § 40.04 (3) (1976).



in this determination, a referendum is conducted.<sup>13/</sup> If determined feasible, and upon the following of a number of prescribed procedures, the district is formed and becomes a governmental subdivision of the state, and a public body corporate and politic.<sup>14/</sup> If it is determined that formation of a district is not feasible, a subsequent petition may not be filed for that same area for 6 months.<sup>15/</sup>

The proceedings for annexing additional territory within an existing district are analagous to the proceedings for organizaing a district.<sup>16/</sup>

Three supervisors of the district are elected,<sup>17/</sup> and two are appointed by the State Board (all must be legal voters residing within the district).<sup>18/</sup>

b. Powers of Districts and Supervisors.<sup>19/</sup>

A district may conduct surveys, investigations, and research to idnetify problems and preventive practices, but, to avoid duplication of research activities, a district cannot initiate a research program except in cooperation with a state or federal agency. It may publish

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<sup>13/</sup> Id. The State Board pays the expenses of the hearing and the referendum, and publishes the results, Minn. Stat. §§ 40.04 (4), (5) (1976).

<sup>14/</sup> Minn. Stat. § 40.04 (6) (1976).

<sup>15/</sup> Minn. Stat. § 40.04 (7) (1976).

<sup>16/</sup> Minn. Stat. § 40.04 (8) (1976). The proceedings for consolidation or separation are also prescribed by this subsection of the statute. Procedures are also established for changing the name of a district, for changing the location of its principal office, and the establishment of supervisor districts. Minn. Stat. §§ 40.04 (10), (11), (12) (1976). It is not necessary that the word "soil" or the work "water" be included as part of the name. Op. Atty. Gen., 705a-3, Nov. 5, 1963.

<sup>17/</sup> See Minn. Stat. § 40.05 (1976).

<sup>18/</sup> Minn. Stat. § 40.06 (1976).

<sup>19/</sup> Act of May 27, 1977, ch. 304, §§ 10-25, 1977 Minn. Sess. Law Serv. (West), amending Minn. Stat. § 40.07 (1976). For cooperation between districts, and with state agencies, see Minn. Stat. §§ 40.12, .13 (1976).

its research results and disseminate information to the public concerning any of its activities. A district may conduct demonstrations projects within the districts with the consent of the land occupier (or state agency if state owned).

A district may implement practices, including structural measures and works of improvement, methods of cultivation, the use of vegetation, and changes in the use of land, on land owned by the district or on land individually owned with the consent of the land occupier. It may enter into agreements, and cooperate in efforts to fulfill state water and soil conservation policy. It may own real or personal property and receive income from such properties.

In addition, a district may make available to land occupiers any machinery or equipment, fertilizer, seeds, seedlings and other material which will assist the land occupier in establishing conservation practices. It may construct and operate structures and works which facilitate the performance of soil and water conservation operations. It may develop a plan specifying the practices to implement state policy. And it may take over, by purchase or otherwise, any soil or water conservation project within its boundaries.

Finally, a district may sue or be sued, execute contracts, and make rules and regulations. When working under an agreement with the federal government, a district has certain additional powers.<sup>20/</sup>

Supervisors may require compensation, commensurate with the cost or reasonable value of their work, for work upon any land not owned by the state.

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<sup>20/</sup> See Act of May 27, 1977, ch. 304, § 22, 1977 Minn. Sess. Law Serv. (West), amending Minn. Stat. § 40.07 (14) (1976).

A conservation district was at one time empowered to purchase tort liability insurance, but this provision of the law has expired.<sup>21/</sup>

In addition to all other powers, the supervisors of a district may, when directed by resolution of a county board, construct and operate in the name of the district works of improvement for any district purpose.<sup>22/</sup> For the purposes of any such works, the board of supervisors may use the proceeds of tax levies, assessments, and any other available funds; may contract, survey, plan, construct, install, maintain or operate such works.<sup>23/</sup>

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<sup>21/</sup> See Minn. Stat. § 40.071 (1976) empowering districts to procure liability insurance as provided in Minn. Stat. § 466.13 (37, but note that §466.13 (3) has expired.

<sup>22/</sup> Minn. Stat. § 40.072 (1976).

<sup>23/</sup> Id. Any person aggrieved by an order of the district board or a joint board of county commissioners in a proceeding undertaken pursuant to §§ 40.072 (5), (6) may appeal to the district court pursuant to Minn. Stat. § 106.631. Minn. Stat. § 40.073 (1976).

5. Drainage and Conservancy Districts.

Chapter III of the Minnesota Code also provides for the establishment of water districts--called drainage and conservancy districts.<sup>1/</sup> Among the purposes for which such a district can be formed are: (a) to provide "for irrigation where it may be needed," and (b) "for the prevention of fires in areas of agricultural lands or in peat areas subject to destruction and damage by fire and for the irrigation of agricultural lands...."<sup>2/</sup> To organize a drainage and conservancy district, a petition must be filed with the clerk of district court.<sup>3/</sup> This petition, which must be signed by either 25% of the resident freeholders of the district (but in no event is more than 50 signatures required) or by proper county or city officials as authorized by resolution passed by that particular subdivision,<sup>4/</sup> must set forth: (a) the proposed name of the district, (b) necessity for the district, (c) a description of the nature, purpose and plan of contemplated improvement and the territory included, and (d) the organization of the district.<sup>5/</sup> A bond for expenses must accompany the petition unless the petition is signed by one or more counties, and accompanied by a resolution that the signing counties will be responsible for all costs.<sup>6/</sup>

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<sup>1/</sup> Minn. Stat. § 111.03 (1976). The policy of this chapter is "Drainage, flood control, and the control of the use of drainage systems in the interests of sanitation and public health..." See Minn. Stat. § 111.02 (1976). See also Minn. Stat. §§ 105.38, 105.392 (1), 112.34 (1976).

<sup>2/</sup> Minn. Stat. § 111.03 (1976).

<sup>3/</sup> Minn. Stat. § 111.04 (1976).

<sup>4/</sup> If signed by 2 or more counties or 5 or more cities, petition need not be signed by freeholders. Minn. Stat. § 111.04 (1976).

<sup>5/</sup> Minn. Stat. § 111.04 (1976).

<sup>6/</sup> Minn. Stat. § 111.05 (1976).

The district court judge will hold a hearing, with notice by publication, and all interested parties will be heard.<sup>7/</sup> If the petition is granted, the district will become a body corporate with power to sue and be sued, and to incur debts.<sup>8/</sup> The inclusion of property within the boundaries of the district does not render the property liable for assessment unless it falls within the classs of property actually benefited.<sup>9/</sup>

The district board, as named in the court order organizing the district, must meet within 10 days after such order.<sup>10/</sup> It must prepare a plan for improvements for which the district was created, and must file such plan with the Commissioner of Natural Resources who will either approve or reject the plan.<sup>11/</sup> If he approves, a hearing will be conducted.<sup>12/</sup> Anyone objecting to the plan must file in writing within 10 days.<sup>13/</sup>

After organization, the district board will appoint 3 disinterested viewers who will inspect all property affected by the proposed improvement, and then file a statement showing actual benefits and damages that will result from the improvement.<sup>14/</sup> All property will be assessable for the cost of improvement in proportion to actual benefits as finally determined by the court.<sup>15/</sup>

Before construction of an improvement, the district board must file a petition with the district court together with an Engineer's report,

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<sup>7/</sup> Minn. Stat. §§ 111.06, .07 (1976).  
<sup>8/</sup> Minn. Stat. § 111.07 (1976).  
<sup>9/</sup> Id. See Minn. Stat. § 111.11 (1976).  
<sup>10/</sup> Minn. Stat. § 111.08 (1976).  
<sup>11/</sup> Id.  
<sup>12/</sup> Id.  
<sup>13/</sup> Id.  
<sup>14/</sup> Minn. Stat. § 111.11 (1976).  
<sup>15/</sup> Id.

the viewers report, and a cost estimate, and then a hearing will be conducted.<sup>16/</sup> A hearing is also required for approval or rejection of modifications.<sup>17/</sup>

The rights of landowners to the use of waters continues as they existed at the time of the organization of the district, but when an improvement by the district makes possible greater, better or more convenient use of the waters within the district, the right of such greater, better or more convenient use is the property of the district.<sup>18/</sup> It may be leased or assigned for reasonable compensation.<sup>19/</sup> Any party desiring to secure the use of such waters, or the district rights therein, may apply to the district board of directors for lease or permission.<sup>20/</sup> A party making greater use without application is considered to be in formal application and the board shall determine a reasonable rate of compensation.<sup>21/</sup> The district must give 3 days notice to such a user, and he is not chargeable for water used prior to such notice.<sup>22/</sup> Use preference is given first to domestic and municipal water supply, and no charge is made for water taken by private persons for home and farm use, or for watering stock.<sup>23/</sup>

The district board of directors has an ongoing duty to investigate the need for repairs, and to take charge of making repairs.<sup>24/</sup> It must report to, and account to, the district court at least once per year.<sup>25/</sup>

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<sup>16/</sup> Minn. Stat. § 111.12 (1976).

<sup>17/</sup> Minn. Stat. § 111.13 (1976).

<sup>18/</sup> Minn. Stat. § 111.22 (1976).

<sup>19/</sup> Id.

<sup>20/</sup> Minn. Stat. § 111.23 (1976).

<sup>21/</sup> Id.

<sup>22/</sup> Id.

<sup>23/</sup> Id.

<sup>24/</sup> Minn. Stat. § 111.34 (1976).

<sup>25/</sup> Minn. Stat. § 111.37 (1976).

6. Watershed Act.

The Minnesota Watershed Act<sup>1/</sup> provides for establishment of multiple purpose watershed districts to develop and manage uniform and integrated programs of water use in separate areas.<sup>2/</sup> The policy behind the Act is the conservation of natural resources through land utilization and flood control for protection of the public health and welfare.<sup>3/</sup>

The Minnesota Water Resources Board<sup>4/</sup> (hereinafter Board) has the authority, upon the filing of a petition, to establish a watershed district and to define its boundaries (all areas of which must be contiguous).<sup>5/</sup> A watershed district may be established for, among other reasons,: (a) irrigation, (b) providing and conserving water supply for agricultural use, or (c) the control of land and soil erosion.<sup>6/</sup>

A petition for a watershed district must be signed by: (a) one-half of the counties within the proposed district, or (b) by a county or counties having 50% of the area within the proposed district, or (c) majority of cities within the proposed district, (d) 50 resident freholders of the proposed district, excluding residents of cities on whose behalf an authorized official has signed the petition.<sup>7/</sup> The petition must set

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<sup>1/</sup> Minn. Stat. §§ 112.34-.86 (1976).

<sup>2/</sup> See Adelman v. Onischuk, 271 Minn. 216, 135 N.W. 2d 670 (1965), cert. denied, 382 U.S. 108 (1965).

<sup>3/</sup> Minn. Stat. § 112.34 (1976). The requirement of Minn. Stat. § 112.39 (3) that the State Water Resources Board determine whether establishment of a watershed district would be for the public welfare and public interest is satisfied if the board finds that the district will promote the conservation purposes enumerated of Minn. Stat. § 112.34. Holversten v. Minnesota Water Resources Board, 291 Minn. 504, 188 N.W. 2d 923 (1971).

<sup>4/</sup> Established by Minn. Stat. § 105.71.

<sup>5/</sup> Minn. Stat. § 112.36 (1976). For procedure for termination, see Minn. Stat. § 112.411 (1976).

<sup>6/</sup> Id.

<sup>7/</sup> Minn. Stat. § 112.37 (1976).

forth a number of things including a map of the proposed district and the purpose of contemplated improvements.<sup>8/</sup>

If a sufficient petition has been filed the Board will conduct a hearing.<sup>9/</sup> After the hearing, the Board may either establish a watershed district, which becomes a political subdivision of the state and a public corporation, or it may dismiss the proceedings.<sup>10/</sup>

The managers, as appointed in the order establishing the district, have the power to, among other things, (a) Construct, clean, repair, alter, abandon, consolidate, reclaim, or change the course of any public ditch, drain, river, watercourse, be it natural or artificial, within the district, (b) acquire, operate, construct and maintain dams, dikes, reservoirs, water supply systems and appurtenant works, and (c) to take over, when directed by a district court or county board, all judicial and county drainage systems within the district.<sup>11/</sup> The managers must appoint an advisory committee to advise them in matters affecting the district.<sup>12/</sup>

Within a reasonable time, the managers must adopt an overall plan for the purposes for which the district was established.<sup>13/</sup> After being reviewed by a number of different agencies, a hearing is conducted.<sup>14/</sup> After adoption, it must be reviewed every two years by the managers of the board.<sup>15/</sup>

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<sup>8/</sup> Id.

<sup>9/</sup> See Minn. Stat. § 112.38 (1976).

<sup>10/</sup> Minn. Stat. § 112.39 (1976).

<sup>11/</sup> Minn. Stat. § 112.43 (1976).

<sup>12/</sup> Minn. Stat. § 112.44 (1976).

<sup>13/</sup> Minn. Stat. § 112.46 (1976).

<sup>14/</sup> Id.

<sup>15/</sup> Id.



After the plan is approved, a petition for improvement consistent with that plan may be filed for consideration.<sup>16/</sup> A hearing must be held.<sup>17/</sup> Works to be paid for by assessment may be instituted by resolution of the district board of managers if the engineers preliminary estimate is under \$125,000 for any single calender year, unless its essential purpose is drainage.<sup>18/</sup>

If a petition is submitted and it is sufficient, the managers will have the necessary surveys and plans for construction made, and the engineer<sup>19/</sup> will prepare a report.<sup>20/</sup> If the engineer's report is unfavorable, a hearing will be held to determine whether the petition should be dismissed.<sup>21/</sup> When the engineer's report is filed, the managers appoint e disinterested resident freeholders to act as appraisers.<sup>22/</sup> These appraisers, with or without the engineer, determine the benefits or damages to all property affected by the project.<sup>23/</sup> Benefits for which assessments can be made include drainage, land reclamation, prevention of siltation and control of erosion.<sup>24/</sup>

A hearing is held within 35 days after receipt of the appraisers report<sup>25/</sup> and the engineer's report.<sup>26/</sup> If at the hearing it is determined that the proposed improvement is conducive to the public health and welfare and that benefits are greater than cost, then construction of the

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<sup>16/</sup> Minn. Stat. § 112.48 (1976).

<sup>17/</sup> Id.

<sup>18/</sup> Id.

<sup>19/</sup> See Minn. Stat. § 112.45 (1976).

<sup>20/</sup> Minn. Stat. § 112.49 (1) (1976)/

<sup>21/</sup> Minn. Stat. § 112.49 (3) (1976).

<sup>22/</sup> Minn. Stat. § 112.50 (1976). Appraisers receive up to \$35 per day, plus expenses, and this is paid for by the district and included in the cost of the improvement. Id.

<sup>23/</sup> Minn. Stat. § 112.50 (1976).

<sup>24/</sup> See Minn. Stat. § 112.501 (1976).

<sup>25/</sup> See Minn. Stat. § 112.51 (1976).

<sup>26/</sup> Minn. Stat. § 112.52 (1976).

improvement will be authorized, and the engineer will make a survey and prepare plans and specifications.<sup>27/</sup> The hearing will be adjourned to await this engineer's report and the receipt of bids.<sup>28/</sup>

Once an improvement is constructed, the managers are responsible for seeing that it is maintained in a condition which will accomplish the purpose for which it was constructed.<sup>29/</sup>

The managers of a watershed district will take over a judicial or county drainage system when directed to do so by district court or the county board.<sup>30/</sup> This can also be done by a petition by any person having an interest in the drainage system.<sup>31/</sup>

As with drainage and conservancy districts, the landowner's rights to the use of waters continue as they existed at the time of the organization of the watershed district unless the improvements make possible a greater, better or more convenient use of the waters in which case the greater, better or more convenient use is the property of the watershed district.<sup>32/</sup>

An aggrieved party has the right to appeal, to the district court or to the Minnesota Water Resources Board, any of the following matters:<sup>33/</sup>

- (a) The amount of benefits determined;
- (b) The amount of damages allowed;
- (c) Relative to the allowance of fees or expenses in any proceeding;
- (d) Any determination which affects a substantial right;
- (e) An order of the board of managers authorizing or refusing to establish a project or improvement in whole or in part.

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<sup>27/</sup> Minn. Stat. § 112.54 (1976).

<sup>28/</sup> Id.

<sup>29/</sup> Minn. Stat. § 112.64 (1976).

<sup>30/</sup> Minn. Stat. § 112.65 (1976).

<sup>31/</sup> Id.

<sup>32/</sup> Minn. Stat. § 112.71 (1976).

<sup>33/</sup> Minn. Stat. § 112.801 (1976).

## 7. Water Pollution

This section very briefly discusses the law of water pollution from "non-point"<sup>1/</sup> agricultural sources. A later chapter in this outline is devoted to agriculturally significant environmental law in general. The control of feedlot pollution, significant "point"<sup>2/</sup> sources of pollution, is discussed in that chapter.

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<sup>1/</sup> The following definition of "point" and "non-point" sources of pollution is quoted from Note, Draft Proposal For Legislation to Control Water Pollution From Agricultural Sources, 59 Cornell L. Rev. 1097, 1100 n. 12 (1974){hereinafter cited as Draft Proposal}:

"Environmental scientists classify sources of pollution into two broad categories: "point" and "non-point" sources. Point sources are easily identifiable, concentrated discharge sources of pollutants, such as smokestacks, sewer pipes, or drainage ditches. Because the point of discharge is concentrated, such sources are easy to measure and study, and therefore are relatively easy to control. Most industrial pollution tends to be from point sources. However, almost one-third of all water pollution in New York State comes from "non-point" sources. ENVIRONMENTAL PLAN 41. "Non-point" sources are those having a diffused point of discharge. Examples are manure and fertilizer runoff from open fields, seepage and leaching of pollutants into surface and ground water, and soil erosion. Because non-point sources lack concentration, they are hard to identify, analyze, and control. Id."

<sup>2/</sup>"Point" source is statutorily defined by Minn. Stat. § 115.01 (15) (1976).

a. Nature of the Problem.

Agriculture has, for the most part, escaped much of the specialized environmental control which has affected other industries.<sup>3/</sup> This is particularly true of non-point sources of agricultural pollution such as pasture land run-off and soil erosion. Most non-point agricultural pollution is a result of soil erosion. The soil particles which run into our rivers and lakes may be contaminated with either nitrogen and phosphorous compounds from animal wastes and commercial fertilizers or toxic chemical pesticide residue which comes from the application of commercial preparations to the soil and to plants.<sup>4/</sup> This points out the importance of soil and water conservation practices, not only to retain the soil, but to prevent contamination<sup>5/</sup> and eutrophication<sup>6</sup> of lakes and rivers. The regulation of non-point pollution has been hindered because of inadequate knowledge of non-point source pollutants and their control and their geographically individualized nature.<sup>7/</sup>

Approximately 4 billion tons of sediment are added to the streams of this country each year.<sup>8/</sup> Solids, primarily silt, entering streams and lakes as a result of agricultural land runoff are estimated to be 700 times the solid discharged by cities in this country.<sup>9/</sup> The problem

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<sup>3/</sup> See Draft Proposal at 1097-98 & n. 3.

<sup>4/</sup> Id. at 1099-1100.

<sup>5/</sup> High concentrations of nitrogen or phosphorus in drinking water is considered dangerous. Draft Proposal at 1101 & n. 19.

<sup>6/</sup> Eutrophication, in simple terms, is the accelerated growth of algae. Draft Proposal at 1101.

<sup>7/</sup> Montgomery, Control of Agricultural Water Pollution: a Continuing Regulatory Dilemma, 1976 U. Ill. L. F. 533, 534 & n. 8.

<sup>8/</sup> Id. at 535 & n. 17.

<sup>9/</sup> Hines, Farmers, Feed lots and Federalism: The Impact of the 1972 Federal Water Pollution and Control Act Amendments on Agriculture, 19 S.D.L. Rev 540, 541 & n. 3 (1974),

is very real, but to date it has been dealt with only marginally by the federal government and by Minnesota government.

b. Federal Regulation.

A brief reference to federal law is necessary at this point because of extensive federal regulation of the water pollution area.

In 1972, Congress amended the Federal Water Pollution Control Act<sup>10/</sup> and created the National Pollution Discharge Elimination System (NPDES).<sup>11/</sup> But NPDES is limited to point sources of pollution.<sup>12/</sup> The Environmental Protection Agency (EPA) was directed to issue guidelines for identification and abatement of non-point sources of pollution, including agricultural activities.<sup>13/</sup> The responsibility for identifying and assessing non-point source water pollutants and developing programs for their control was left to the states.<sup>14/</sup>

Other significant federal regulation in this area includes the Rivers and Harbors Act<sup>15/</sup> which retains for the federal government the authority to promulgate and enforce water quality standards for coastal, interstate and navigable waters, and the Federal Insecticide, Fungicide, and Rodenticide Act<sup>16/</sup> to control the sale, use, labeling and advertising of toxic pesticides.

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<sup>10/</sup> 33 U.S.C. §§ 1251-1376 (Supp. V 1975).

<sup>11/</sup> 33 U.S.C. §§ 1342-45 (Supp. V 1975).

<sup>12/</sup> Farmer can avoid the NPDES permit requirements by not putting in ditches to collect runoff water.

<sup>13/</sup> 33 U.S.C. § 1314 (Supp. V 1975).

<sup>14/</sup> 33 U.S.C. §§ 1288, 1313 (Supp. V 1975).

<sup>15/</sup> 33 U.S.C. §§ 401-67 (1970), as amended (Supp. V 1975).

<sup>16/</sup> 7 U.S.C. §§ 135-36 (1970), as amended (Supp. V 1975).

c. Minnesota Water Pollution Control Act.

The Minnesota Water Pollution Control Act<sup>17/</sup> includes in the definition of "pollution of water" the discharge of any pollutant which is potentially harmful to agriculture or livestock,<sup>18/</sup> It also defines "other waste" to include agricultural waste,<sup>19/</sup> and "sewage" to include excrementitious or other discharge from animals.<sup>20/</sup> The Minnesota Pollution Control Agency (PCA) has the authority to adopt and enforce rules requiring the discontinuance of the discharge of "sewage", industrial waste or "other wastes" into any waters of the state resulting in pollution in excess of applicable standards.<sup>21/</sup> It has not adopted any rules which will control non-pont agricultural pollution.

The Minnesota Act does require permits for point sources of pollution.<sup>22/</sup> But it has done very little to control agricultural non-point sources of pollution.

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<sup>17/</sup> Minn. Stat. §§ 115.01-.09 (1976).

<sup>18/</sup> Minn. Stat. § 115.01 (5) (1976).

<sup>19/</sup> Minn. Stat. § 115.01 (4) (1976).

<sup>20/</sup> Minn. Stat. § 115.01 (2) (1976).

<sup>21/</sup> Minn. Stat. § 115.03 (1) (e) (1976); see 6 M.C.A.R. § 4, Minn. Reg. WPC §§ 1-37 (1972), as amended.

<sup>22/</sup> Minn. Stat. § 115.04 (1976).

8. Other

Two other statutes related to water law have implications for agriculture. These two are addressed briefly in the following two sections.

a. Drilling Wells on Farms.

The drilling of wells is regulated by the state, and drillers must be licensed by the state Board of Health.<sup>1/</sup> A license is not required, however, of an individual who drills a water well on land which is owned or leased by him and used by him for farming or agricultural purposes, or as his place of abode.<sup>2/</sup>

b. Federal Land and Water Fund.

The Governor is the state agency which applies for, accepts and disburses funds for Minnesota pursuant to the Federal Land and Water Fund Act.<sup>3/</sup> Fifty percent of the monies received will be distributed for projects of local government, but a local government project receiving funds must be consistent with the statewide plan.<sup>4/</sup>

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<sup>1/</sup> See Minn. Reg. §§ 156A.01-.08 (1976).

<sup>2/</sup> Minn. Stat. § 156A.02 (3) (1976).

<sup>3/</sup> Minn. Stat. § 87.71 (1) (1976).

<sup>4/</sup> Minn. Stat. § 87.71 (4) (1976).

## II. FARM BUSINESS ORGANIZATION.

This chapter is not a comprehensive discussion of farm business organizations. It does not, for example, discuss the partnership, nor the limited partnership.<sup>1/</sup> It does discuss farm incorporation, including the constitutionality of family farm legislation, the Minnesota Family Farm Incorporation Act, consideration involved in the decision to incorporate, and farm incorporation as an estate planning vehicle. Section B discusses farm probate and estate issues including the powers of the personal representative and federal estate tax planning. Section C briefly addresses farm name recording.

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<sup>1/</sup> See Minn. Stat. §§ 322.01 et seq., 323.01 et seq.



A. Farm Incorporation.

The general purpose of legislation limiting corporations from engaging in farming or owning agricultural land is to preserve the existing family farm system.<sup>1/</sup> The unerlying motivation behind such legislation are sociological and political, and, in some ways, seem contrary to economic trends.<sup>2/</sup> One aim of these laws is to protect against vertical integration, in which large integrated agribusinesses would control agriculture from the planting of the seed to marketing of the processed product.<sup>3/</sup> Another aim is to prevent external ownership with resulting tenant farms, or, stated differently, to preserve the situation where the farmer is both owner and operator of the farm.<sup>4/</sup>

For a discussion of restriction on alienc corporations owning agricultural land, see Chapter I, estates in land, section (7).

1. Constitutionality.

Family farm legislation was first challenged in the courts in 1945 in Asbury Hospital v. Cass County.<sup>5/</sup> In that case the United States Supreme Court upheld North Dakota's family farm legislation in the face of due process and equal protection challenges. Still unresolved is the question of whether the legislation is valid under

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1/ See Morrison, State Corporate Farm Legislation, 7 Toledo L. Rev. 961, 961, 992 (1976) {hereinafter cited as Morrison}.

2/ Id. at 992.

3/ Id. at 993.

4/ Id. at 994-95.

5/ 326 U.S. 207 (1945).

the commerce clause--do statutes of this type interfere with free commercial intercourse? 6/

2. The Minnesota Family Farm Incorporation Act

The Minnesota Family Farm Incorporation Act 7/ restricts farming 8/ and ownership of agricultural land 9/ by corporations. 10/ No corporation may engage in farming; nor can it, either directly or indirectly, own, acquire, or otherwise obtain an interest, whether legal, beneficial or otherwise in any title to real estate used for farming or capable of being used for farming. 11/

a. Exceptions

There are numerous exceptions to this prohibition, including a

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6/ For incisive analysis of this question, see Morrison at 980-89.

7/ Minn. Stat. § 500.24 (1976).

8/ "Farming" is defined as "the production of (1) agricultural products; (2) livestock or livestock products; (3) milk or milk products; or (4) fruit or other horticultural products. It does not include the processing, refining, or repackaging of said products, nor the provision of spraying or harvesting services by a processor or distributor of farm products. It does not include the production of timber or forest products or the production of poultry or poultry products." Act of April 4, 1978, ch. 722, § 1, 1978 Minn. Sess. Law Serv. (West), amending Minn. Stat. § 500.24(1976). Prior to the 1978 amendment, the production of poultry or poultry products was included in the definition of farming, Minn. Stat. § 500.24(1)(3)(1976). The prior statute also did not address the status of "processing, refining, or packaging," which is now clearly excluded from the definition of farming. Id.

9/ "Agricultural land" means "land used in farming." Minn. Stat. § 500.24 (2)(1976).

10/ Minn. Stat. § 500.24(2)(1976).

11/ Id. By using the words "indirectly" and "beneficial" in this statute, the Act prevents a corporation from circumventing the statute by becoming a partner in a partnership, which partnership would then own land or engage in farming. See Morrison at 990.

family farm corporation<sup>12/</sup> and an authorized farm corporation.<sup>13/</sup>

Other exceptions are:<sup>14/</sup>

- (a) An encumbrance taken for purposes of security,
- (b) Agricultural land<sup>15/</sup> and land capable of being used for farming owned by, or leased by, a corporation as of May 20, 1973, including an expansion of such ownership or leasehold at a rate not to exceed 20 percent of the amount owned on May 20, 1973, in any five year period,
- (c) Certain agricultural land operated for research and experimental purposes,
- (d) Agricultural land operated by a corporation for raising breeding stock for resale to farmers, or for growing seed, wild rice, nursery plants or sod,

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<sup>12/</sup> A "family farm corporation" is "a corporation founded for the purpose of farming and the ownership of agricultural land in which the majority of voting stock is held by and the majority of stockholders are persons or the spouses of persons related to each other within the third degree of kindred according to the rules of civil law, and at least one of said realted persons is residing on or actively operating the farm, and none of whose stockholders are corporations, provided that a family farm corporation shall not cease to qualify as such hereunder by reasons of any devise or bequest of shares of voting stock." Minn. Stat. § 500.24(1) (c) (1976). Note that a family farm corporation is exempt from the Workers Compensation Act. See Minn. Stat. § 176.041 (1976).

<sup>13/</sup> Minn. Stat. § 500.24(2) (1976). An "authorized farm corporation means a corporation meeting the following standards: (1) Its shareholders do not exceed 5 in number; (2) All its shareholders, other than any estate, are natural persons; (3) It does not have more than one class of shares; (4) Its revenues from rent royalties, dividends, interest and annuities does not exceed 20 percent of its gross receipts; and (5) A majority of the shareholders must be residing on the farm or actively engaged in farming." Minn. Stat. § 500.24(1) (d) (1976). The number of permitted shareholders (5) is the lowest among states with family farm legislation. Morrison at 968 n. 30. Iowa, for example, allows 25. *Id.*

<sup>14/</sup> Minn. Stat. § 500.24(2) (1976).

<sup>15/</sup> See Note 9, *supra*.

- (e) Agricultural land acquired by gift by an educational, religious, or charitable nonprofit corporation, but, if not operated for purposes as stated in (c) or (d), such land must be sold within ten years,
- (f) Agricultural land acquired for, and used for, a specific nonfarming purpose, with certain restrictions on the use of the land pending the development of the nonfarm purpose,
- (g) Agricultural land acquired by process of law in the collection of debts, or by enforcement of a lien or mortgage, but such land must be sold within 10 years, and there are restrictions on the farming of such land during that 10 year period,
- (h) Agricultural land acquired by a corporation regulated by Chapter 216B of the Minnesota Statutes (Public Utilities) for the purposes described in that chapter, or by an electric generation or transmission cooperative, but with certain restrictions on the farming of such land,
- (i) Agricultural land of up to 2700 acres for replacing or expanding asparagus growing operations if the corporation had established 2,000 acres of asparagus production,
- (j) All agricultural land held by an authorized farm corporation as defined in the 1974 statutes, but which does not now qualify as an authorized farm corporation,<sup>16/</sup>

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<sup>16/</sup> See note 13, supra for current definition.

- (k) A corporation formed primarily for religious purposes whose sole income is derived from agriculture.
- (l) Agricultural land owned or leased by a corporation prior to August 1, 1975, which was exempt from the restrictions of the Act up to that time, <sup>17/</sup> including an expansion rate not to exceed 20 percent over a five-year period.
- (m) Agricultural land owned or leased by a corporation prior to August 1, 1978, including normal expansion at a rate of 20 percent <sup>18a/</sup> and the additional ownership reasonably necessary to meet the requirements of pollution control regulations.

b. Reports

The Minnesota Family Farm Incorporation Act requires that certain reports be made to the Commissioner of Agriculture. <sup>18b/</sup> A report must be made by every corporation holding an interest in agricultural land, land used for livestock purposes <sup>19/</sup> and land used in production of agricultural crops other than an interest which is encumbrance taken for purposes of security, or by a corporation which is engaged in farming. <sup>20/</sup> It must include

- (a) the name of the corporation and its place of incorporation,
- (b) certain specified addresses,
- (c) the acreage and location of all land owned or leased and used for growing crops or livestock production,
- (d) names and addresses of officers, large shareholders, and members of the board of directors, and
- (e) the products produced or intended to be produced. <sup>21/</sup>

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<sup>17/</sup> See ch. 427, § 1, Minn. Sess. Laws (1973).

<sup>18a/</sup> This exception was added by the legislature in 1978. Act of April 4, 1978, ch. 722, § 1, 1978 Minn. Sess. Law Serv. (West), amending Minn. Stat. § 500.24(1976). Unlike the previous exceptions, which allow a 20 percent expansion for each 5-year period, no mention is made here of the time limitations in which the 20 percent expansion will be allowed. This may have been an oversight in the drafting of the legislation, unless, of course, an absolute and permanent limit on expansion was intended.

<sup>18b/</sup> See Minn. Stat. § 500.24(3)(1976).

<sup>19/</sup> Including poultry.

<sup>20/</sup> Minn. Stat. § 500.24(3)(1976).

<sup>21/</sup> Id.

The reports of a corporation seeking to qualify as a family farm corporation or authorized farm corporation must contain certain additional information, including the number of shares owned by persons residing on or actively engaged in farming, or their relatives; the name, addresss and number of shares owned by each shareholder; and a statement as to the percentage of gross receipts of the corporation derived from rent, royalties, dividends, interest, and annuities.<sup>22/</sup>

No corporation can commence farming in Minnesota until the Commissioner of Agriculture has inspected its report and certified that it is in compliance with the Family Farm Incorporation Act.<sup>23/</sup> An annual report containing the information described above must be filed by April 15th of each year based on the corporation's operations during the preceding calendar year and its status at the end of such year.<sup>24/</sup> Failure to file a required report, or the willful filing of a false report, is a gross misdemeanor.<sup>25/</sup>

Once this reporting system is fully operative, it should provide useful information about the extent to which corporate farming is operating in Minnesota.<sup>26/</sup>

c. Enforcement

A violation of this Act is not a criminal offense, but it may be enjoined by the Attorney General and the violating corporation will be

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<sup>22/</sup> Id.  
<sup>23/</sup> Id.  
<sup>24/</sup> Id.  
<sup>25/</sup> Id.  
<sup>26/</sup> See Morrison at 973.

compelled to cease the prohibited activity.<sup>27/</sup> Thereafter, the corporation has five years to sell the land (this five-year period is a covenant running with title to the land).<sup>28/</sup> Any land not divested within five years may be sold at public sale in the manner prescribed for foreclosure of a mortgage by action.<sup>29/</sup>

### 3. Considerations in Incorporating

In addition to the restrictions imposed by the Family Farm Act, there are numerous other factors which must be considered in deciding whether to incorporate a farm or ranch. This outline will not go into detail in discussing the considerations involved, but will mention some of the major advantages and disadvantages of incorporation.

One of the major advantages of farm incorporation is limited tort and contract liability.<sup>30/</sup> This advantage is of limited utility if, as is frequently the case, the lender requires the borrower to co-sign for a loan. Insurance can always be purchased to cover tort liability.

Other nontax advantages of incorporation include continuity of existence, free transferability of interest (subject to limitation by agreement, articles of incorporation or by-laws), and the possibility of improved credit due to lender perceptions of increased managerial competence.<sup>31/</sup> "Nontax" disadvantages include additional time and expense for legal and accounting services, filing fees, organizational

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<sup>27/</sup> See Minn. Stat. § 500.24(4) (1976).

<sup>28/</sup> Minn. Stat. § 500.24(4) (1976).

<sup>29/</sup> Id.

<sup>30/</sup> See Note, 43 Minn. L. Rev. 305, 308 § n. 18 (1958).

<sup>31/</sup> See Hall, Agricultural Corporations: Their Utility and Legality, 17 Okla. L. Rev. 389, 394 (1964).

taxes, annual franchise taxes, formalities, and the inflexibility of returning to the noncorporate form.<sup>32/</sup>

The most important and most complex consideration in the decision of whether to incorporate an agricultural operation is the impact of federal tax laws. Some of the specific tax advantages are:<sup>33/</sup>

- (a) The maximum corporate tax rate is lower, i.e., 20 percent on the first \$25,000 of taxable income, 22 percent on the second \$25,000, and 48 percent on anything over \$50,000.<sup>34/</sup> For an individual, no more than 30 percent of farm or ranch income may qualify as earned income for purposes of the 50 percent maximum tax.<sup>35/</sup>
- (b) Favorable employee participation in qualified pension and profit sharing plans.<sup>36/</sup>
- (c) Exclusion from a beneficiary's gross income of up to \$50,000 for employee death benefits.<sup>37/</sup>
- (d) Exclusion by an employee from gross income of the cost for up to \$50,000 of group-term life insurance.<sup>38/</sup>
- (e) Exclusion from gross income by an employee of employer contributions to an accident and health plan.<sup>39/</sup>

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<sup>32/</sup> L. Raskind and M. Rose, Federal Income Taxation of Business Organizations and Their Owners: Cases, Materials, and Problems, ch. 1 (1977) (to be published) {hereinafter cited as Raskind}.

<sup>33/</sup> See Raskind, ch. 1.

<sup>34/</sup> I.R.C. § 11. After December 31, 1978, the rate is 22 percent of the first \$25,000 and 48 percent thereafter. Id.

<sup>35/</sup> I.R.C. §§ 911(b), 1348.

<sup>36/</sup> See I.R.C. §§ 401-04.

<sup>37/</sup> I.R.C. § 101(b).

<sup>38/</sup> I.R.C. § 79(a).

<sup>39/</sup> I.R.C. § 106.



- (f) Deductibility of contributions by an employer to a qualified pension or profit sharing plan.<sup>40/</sup>
- (g) Deductibility of at least \$5,000 by an employer of benefits paid on account of an employee's death, for employee group-term life insurance, and for contributions to an accident and health plan.<sup>41/</sup>
- (h) The corporation may choose the most advantageous accounting method and accounting period.<sup>42/</sup>
- (i) Facilitation of estate planning for shareholders through capitalization of the corporation with stock having different rights for voting, dividends, redemption, liquidation, or transferability and securities with different terms for maturity, interest, subordination and convertability (for discussion, see incorporation and estate planning in the following section of this outline).

Among the disadvantages of incorporation is the possible application of two penalty taxes.<sup>43/</sup> A farm corporation may be subject to a tax for unreasonable accumulations of earnings and profits.<sup>44/</sup> A corporation may also be subject to a 70 percent tax on undistributed personal holding company income, which is passive income such as rents, dividends, and interest.<sup>45/</sup> These disadvantages can be avoided with sound tax advice.

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<sup>40/</sup> I.R.C. § 404. But note that the self-employed individual can set up an individual retirement account under I.R.C. § 408.

<sup>41/</sup> I.R.C. § 162(a).

<sup>42/</sup> See I.R.C. §§ 441, 446, 447; Trea. Reg. § 1.446-1(c) (2) (i), 1.471-6(a). For discussion, see Lucas and Wilkonson, Agribusiness: Operating as a Corporation, 6 Tax Advisor 678, 679 (1975) [hereinafter cited as Lucas].

<sup>43/</sup> Raskind, ch. 1, 9, 10.

<sup>44/</sup> I.R.C. §§ 531-37. After an initial credit of \$150,000 this tax is 27½ percent of the first \$100,000 and 38½ percent of the excess. Id.

<sup>45/</sup> I.R.C. § 541.

Another major tax disadvantage is that there may be double taxation of corporate earnings and profits because the corporation is taxed on its income and shareholders are taxed again upon dividend distribution. This disadvantage will be minimal if a major portion of corporate earnings is distributed as compensation. Other tax disadvantages include:<sup>46/</sup>

- (a) A reasonable salary provision which places a ceiling on the amount deductible as compensation.<sup>47/</sup>
- (b) Social Security taxes are greater for corporations and their owner-employers than for individual proprietors or partners.<sup>48/</sup>
- (c) The 50 percent-of-capital-gain deduction is not available to corporations, and capital losses of corporations may be offset only against capital gains.<sup>49/</sup>
- (d) A corporation is required to pay an estimated tax, while an unincorporated operation need not.

In order for the incorporating transfer of an agribusiness to be tax free, it must meet certain requirements.<sup>50/</sup> Also, a subchapter S<sup>51/</sup>

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<sup>46/</sup> Raskind, ch. 1.

<sup>47/</sup> I.R.C. § 162(a) (1).

<sup>48/</sup> I.R.C. §§ 1401, 3101, 3111, 3121(a) (1)

<sup>49/</sup> I.R.C.

<sup>50/</sup> Lucas at 681. See I.R.C. § 351(a) for guidance on tax-free transfer of property to a controlled corporation; I.R.C. § 351(b) for when gain may be recognized due to the receipt of boot; I.R.C. 357(c) for recognition of gain on transfer of low-basis property to the corporation; I.R.C. §§ 351, 482 and *Rooney v. United States*, 305 F.2d 681 (9th Cir. 1962) for when to incorporate (timing).

<sup>51/</sup> I.R.C. §§ 1371-79. An "S" election is only available to a domestic corporation of 10 or fewer shareholders, and there can only be one class of stock. Treas. Reg. § 1.1371-1(a). Not more than 20 percent of this income can be from passive sources. I.R.C. § 1372(3) (5). This is generally not a problem with farm corporations. For discussion of subchapter S and farm corporations see Lucas at 683; Eastwood, The Farm Corporation from the Income Tax Viewpoint: Friend or Foe? 54 Neb. L. Rev. 443, 478-88 (1975).

election may be beneficial to an agribusiness corporation because it avoids the double taxation aspects of the corporate form. Because of the complex requirements under subchapter S, an election of this nature should only be done with sound tax advice. Liquidation of the farm corporation can also present tax problems.<sup>52/</sup>

The relative advantages and disadvantages of farm incorporation have to be considered in each individual case. In many cases there will be sufficiently significant tax, estate planning and employee benefits to warrant consideration of incorporation. This is particularly true in view of the fact that agricultural operations are increasing in size and complexity.

#### 4. Incorporation and Estate Planning<sup>53/</sup>

Most farmers own large amounts of real estate. As a result, they face the problem of getting this property to their heirs without imposing a large death tax on the beneficiaries. A large death tax may require the beneficiary to sell or mortgage land or personal property in order to get the liquid capital to pay the taxes. Farm incorporation

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<sup>52/</sup> See I.R.C. §§ 336, 337 (liquidation, nonrecognition rules); I.R.C. § 268 (prior tax benefit); I.R.C. §§ 47(a), 1245, 1250-52 (recapture).

<sup>53/</sup> For a thorough discussion of farm estate planning, see Contemporary Studies Project: Large Farm Estate Planning and Probate in Iowa, 59 Iowa L. Rev. 794 (1974).

may help solve this problem. One writer phrases it this way:<sup>54/</sup>

In most situations the greatest advantage of incorporation will probably be in the estate planning area. By gifts of shares of stock the owner of a farm or ranch<sup>55/</sup> can reduce his taxable estate with a minimum of gift taxes, spread the income to members of the family who are probably in lower tax brackets, and keep the unit intact with himself in control so long as desired. Whether other considerations will outweigh or strengthen these advantages must depend upon the particular situation.

The corporate form can be useful in achieving the maximum marital deduction.<sup>56/</sup> This is because the divisible nature of shares makes it easier to pass a life estate in one-half of certain types of property, e.g., livestock,

One possible way to utilize the corporate form to achieve estate planning goals is to sell corporation stock to the next generation on a fixed price contract payable in installments.<sup>57/</sup> This has the double advantage of fixing estate tax values and assuring a retirement income for the parents.<sup>58/</sup> Also, the corporate form allows income participation by absentee heirs.<sup>59/</sup> The operating heirs can control the operation through voting control devices.<sup>60/</sup>

This is not an exhaustive list of the advantages of the farm corporation as an estate planning device, but it does show that there are enough advantages that this device should be considered.

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<sup>54/</sup> Hall, Agricultural Corporations: Their Utility and Legality, 17 Okla. L. Rev. 389, 394 (1964).

<sup>55/</sup> Under I.R.C. § 2503(b), a person may donate \$3,000 a year to each of any number of donees, and this amount will not be taxed. Any amount over \$3,000 to any person during a single year will be taxed under I.R.C. § 2503(a). The tax rate on gifts is the same as the estate tax rate. See I.R.C. § 2001.

<sup>56/</sup> See I.R.C. § 2056.

<sup>57/</sup> See Kelley, The Farm Corporation as an Estate Planning Device, 54 Neb. L. Rev. 217, 245-52 (1975).

<sup>58/</sup> Id.

<sup>59/</sup> Id. at 252-3.

<sup>60/</sup> Id. But as the author points out, "a low rate of income and the typical desire in agriculture to retain as much operating income as possible for expansion or debt reduction may produce inequities and dissatisfied absentee shareholders." Id.

## B. Probate and Estate

Minnesota has adopted, with certain minor exceptions, the Uniform Probate Code (UPC).<sup>1/</sup> The UPC does not contain any significant exceptions relating to agriculture.

### 1. Powers of the Personal Representative

Because of the extensive powers granted to a personal representative by the UPC, he is generally able to continue operation of a farm in an uninterrupted manner (assuming no real or personal property needs to be sold to pay death taxes).<sup>2/</sup> A personal representative takes possession or control of all of decedent's property, except real property which goes to the presumptive entitlee, and he must take steps for the management, protection, and preservation of the estate in his possession or control.<sup>3/</sup> He has the same power over title of property that an absolute owner has, and he can exercise this power without notice, hearing or court order.<sup>4/</sup> A person who, in good faith, deals with a personal representative for value is protected as if the personal representative properly exercised his power.<sup>5/</sup> No restriction on a personal representative's power is effective unless the person dealing with him has actual knowledge.<sup>6/</sup>

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<sup>1/</sup> Minn. Stat. §§ 524.1-101 to .8-103 (1976).

<sup>2/</sup> See, e.g., Minn. Stat. §§ 524.3-715, -709, -711, -814 (1976). The personal representative is a fiduciary who must observe a standard of care in dealing with estate assets that would be observed by a prudent man dealing with the property of another. Minn. Stat. § 524.3-703(a) (1976).

<sup>3/</sup> Minn. Stat. § 524.3-709 (1976).

<sup>4/</sup> Minn. Stat. § 524.3-711 (1976). In an informal proceeding, he cannot sell, encumber, lease or distribute any interest in real estate until 30 days after issuance of letters. Id.

<sup>5/</sup> Minn. Stat. § 524.3-714 (1976).

<sup>6/</sup> Id.

Among other things, the personal representative has the power to:<sup>7/</sup>

- (a) Retain assets of the decedent.
- (b) In performing enforceable contracts of the decedent to convey or lease land, he may execute and deliver a deed for the cash remaining due or execute and deliver the purchaser's note for the sum remaining due secured by a mortgage or deed of trust, or he may deliver a deed in escrow directing the proceeds be paid to successors of the decedent.
- (c) Acquire or dispose of an asset, including land, and manage, develop, improve, exchange, partition, change the character of or abandon an asset.
- (d) Repair or alter buildings or erect new structures.
- (e) Enter a lease for a period that extends beyond the period of administration.
- (f) Enter a mineral lease.
- (g) Insure.
- (k) Borrow money.
- (l) Compromise with a debtor.
- (m) Employ persons.
- (n) Prosecute and defend claims.
- (o) Sell, mortgage or lease real or personal property (except for a homestead of a spouse where written consent is required).
- (p) Continue any unincorporated business in the same business for for four months, or for any additional period approved by the court in a formal hearing, and may continue (a business) incorporated by him throughout the period of administration.

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<sup>7/</sup> Minn. Stat. § 524.3-715 (1976).

(q) Incorporate any business in which the decedent was involved when he died.

(r) Foreclose a mortgage, lien, pledge, or collect debts.<sup>8/</sup>

## 2. Farm Estate Tax Planning

For a discussion of the farm corporation as an estate planning device, see the preceding section of this chapter. There are numerous other estate planning devices, a discussion of which is beyond the scope of this outline.<sup>9/</sup>

The reason estate planning for farmers is different is because the property ~~he~~<sup>they</sup> possesses is different and because certain sections of State and Federal estate and gift tax law are specific to farming.<sup>10/</sup> Today, estate planning by the farmer is more important than ever because of the rapidly increasing value of land, and because of the increasing size and complexity of agricultural operations.

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<sup>8/</sup> On the other hand, if an asset of the estate is encumbered, the personal representative can pay the encumbrance or part thereof, renew or extend an obligation secured by the encumbrance, or convey or transfer the asset to the creditor. Minn. Stat. § 524.3-814 (1976). This does not increase the share of the distributee entitled to the encumbered asset unless the distributee is entitled to exoneration. Id. See also Minn. Stat. § 525.21 (1976).

<sup>9/</sup> For a comprehensive discussion of farm estate planning, see Contemporary Studies Project: Large Farm Estate Planning and Probate in Iowa, 59 Iowa L. Rev. 794 (1974). See also Neil E. Harl, Farm Estate and Business Planning (Skokie, Ill.: Century Communications, Inc., 1979), Dale C. Dahl and Phillip E. Kunkel, Planning Your Estate (St. Paul: University of Minnesota, Agricultural Extension Service and the Minnesota State Bar Association, Revised 1979) and J. W. Looney, Estate Planning for Farmers (St. Louis, Mo.: Doane Agricultural Service, Inc., 1979).

<sup>10/</sup> Yet he possesses few liquid assets. One writer suggests that farmers should be advised to purchase stocks, bonds, and life insurance; he does not, however, comment on the probability of success of such counseling. See Wiggins, Estate Problems of Farm Families, 109 Tr. & Est. 918, 919 (1970).

Congress made several changes in the Internal Revenue Code through the Tax Reform Act of 1976 which are of importance to farmers. They raised the estate tax credit so that by 1981, a \$47,000 tax credit will apply.<sup>11/</sup> This means that almost \$180,000 worth of property will pass through an estate tax free (without considering the marital and other deductions).<sup>12/</sup> Another significant change made by the Tax Reform Act of 1976 is in the rules for determining what property is included in the gross estate.<sup>13/</sup>

The 1976 Act also provides that, if certain conditions are met, real property included in a decedent's estate that is used for farming may be valued at the property's actual use, and not its highest and best use.<sup>14/</sup> Congress recognized that highest and best use of farm land may result in an artificially high estate tax.<sup>15/</sup> It benefits the farmer by lowering his estate tax, while at the same time encouraging his heirs to continue to use the property as a farm.<sup>16/</sup> For the actual use standard to apply, the following conditions must be met:<sup>17/</sup>

- (1) Decedent must have been a resident or citizen of the U.S.
- (2) The property must pass to a qualified heir<sup>18/</sup> and a requisite agreement<sup>19/</sup> must be filed.

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<sup>11/</sup> See I.R.C. § 2010.

<sup>12/</sup> See I.R.C. § 2001, 2010.

<sup>13/</sup> See I.R.C. §§ 2033-45.

<sup>14/</sup> See I.R.C. § 2032A. Note that this special use valuation cannot reduce the value of the property by more than \$500,000. *Id.*

<sup>15/</sup> 2 CCH Fed. Est. Gift Tax Rep. ¶6458 (1977).

<sup>16/</sup> *Id.*

<sup>17/</sup> I.R.C. § 2032A(b).

<sup>18/</sup> A "qualified heir" refers to a member of the decedent's family (ancestors or lineal descendants, lineal descendants of his grandfathers, his spouse, or spouses of such descendants). I.R.C. § 2032A(e) (1).

<sup>19/</sup> If the special use valuation is elected, the executor must so elect within the time allowed for filing an estate tax return, and must file with the return a written agreement signed by all persons who have an interest in the property subject to the actual use valuation. 2 CCH Fed. Est. & Gift Tax Rep. ¶6458.03 (1977).



- (3) The decedent or a member of his family must have owned the property and have substantially participated in operation of the farm for farming purposes for five of the last eight years prior to decedent's death.
- (4) The adjusted value of the real and personal property used in the farm must compromise at least 50 percent<sup>20/</sup> of the adjusted value of decedent's estate.
- (5) At least 25 percent<sup>20/</sup> of the adjusted value of the gross estate must be qualified real property.<sup>21/</sup>

If a farm qualified for actual use valuation, it is valued on a formula of cash rentals, real estate taxes, and effective interest rates.<sup>22/</sup> If the farm passes out of the family or ceases to be used as a farm within 15 years after decedent's death, the tax benefits realized may be recaptured.<sup>23/</sup>

The federal estate tax laws have a very substantial impact on the disbursement of property upon death. No farmer can afford to avoid estate planning unless he intends to allow the government to obtain a large percentage of his property when he dies.

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<sup>20/</sup> For purposes of these percentage tests, the gross estate is computed under the highest and best valuation method (both personal and real property) and then reduced by the amounts allowed for deductions under I.R.C. § 2053(a) (4). 2 CCH Fed. Est. & Gift Tax Rep. ¶6458.06 (1977).

<sup>21/</sup> "Qualified real property" means the property must be located in the U.S., used either as a farm or for farming purposes (see I.R.C. § 2032A(e) (4), (5) for definition of farm and farming purposes), and a profit motive is mandatory. 2CCH Fed. Est. & Gift Tax Rep. ¶6548.05 (1977).

<sup>22/</sup> I.R.C. § 2032A(3) (7), see 2 CCH Est. & Gift Tax Rep. ¶6548.07 (1977)

<sup>23/</sup> I.R.C. § 2032A(c), see 2 CCH Est. & Gift Tax Rep. ¶6548.075 (1977).

The Revenue Act of 1978 also made significant changes in the estate tax sections of the Internal Revenue Code. The new law allows any taxpayer who is 55 or over to elect to exclude up to \$100,000.00 of gain from the sale or exchange of a residence. To qualify, the taxpayer must have owned and occupied this property as a principal residence three out of the five years immediately preceeding the sale or exchange. The exclusion is available only once in a lifetime and is effective for sales or exchanges made after July 26, 1978. The exclusion may be combined with the reinvestment of a portion of the sale proceeds in a new principal residence so as to shelter a gain of more than \$100,000.00.<sup>24/</sup>

Prior to the Tax Reform Act of 1976, property which was inherited acquired a tax basis equal to its fair market value for Federal Estate Tax purposes. This act provided that property passing from a decedent dying after December 31, 1976, would retain its basis in the hands of the decedent with certain adjustments. A transitional "fresh start" rule provided that the basis of property held by the decedent on December 31, 1976, would generally be increased to its value on December 31, 1976, for the purposes of computing gain on any later sale of the property.

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<sup>24/</sup> I.R.C. § 121.

The Revenue Act of 1978 postponed the effective date of these "Carry Over Basis" provisions for 3 years, so that property acquired from or passing from a decedent dying before January 1, 1980, will obtain a "Stepped up" basis pursuant to the law in effect prior to the Tax Reform Act of 1976. For persons dying after December 31, 1979, there are "fresh start" adjustments which will apply only to property held by the decedent on December 31, 1976, and will be computed with reference to the fair market value of the property on that date. 25/

Despite this recent modification of the law in this area it is not unlikely that the Tax Reform Act of 1976 provisions relating to carry over basis will be revised or eliminated entirely before they are scheduled to go into effect.

Under the new act, there is excluded from a decedent's gross estate any gift made to a donee where no gift tax return was required to be filed. However, if the gift is required to be shown on a gift tax return, it is included in the gross estate if made within three years of death. 26/

What this means is that if the gift is valued at more than \$3,000.00, or gifts totaling more than \$3,000.00 have been given to one donee in any one year, the entire value of the gift is included in the gross estate of the decedent who dies within 3 years

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25/ I.R.C. §§ 691,1023.  
26/ I.R.C. § 2035.

of making the gift. The Act's provisions would also mean that a \$6,000.00 gift made within three (3) years of death from a decedent's separate property to which his or her spouse consented for purposes of Federal Gift taxes would not be protected either, and all of the \$6,000.00 would be includable in the decedent's gross estate since the spousal consent must be shown by the filing of a gift tax return. However, if property at the time of transfer was worth \$3,000.00 or less, then even if the property is valued at \$50,000.00 at the donor's death two (2) years later, no part of the property will be included in the donor's estate.

Under prior law, the surviving spouse's participation in a jointly held family farm or business was generally not considered in figuring the value of that farm or business in the deceased spouse's estate. The general rules governing the rules of jointly held property would apply. These rules usually require the inclusion of the entire value of joint property in the estate of the first joint tenant to die unless it can be shown that the surviving tenant contributed to the original consideration for the property. This meant that if a husband provided all the consideration for a jointly held business and he died first, the full value of the business would be included in the estate even though the wife was an equal partner in the operation of the business.

The new Act permits an estate of the decedent dying after December 31, 1978, to elect to exclude a portion of the value of the interest in farm or business property held jointly by a husband

and wife if the surviving spouse "materially participated" in the operation of the farm or other trade or business in which the property was used. The amount of the exclusion, which cannot exceed 50% of the value of any joint interest or \$500,000.00, is computed under the formula that takes into account the unrealized appreciation in the value of the jointly held property and the number of years in which the surviving spouse "materially participated" in the operation of the farm or other trade or business. 27/

For Federal estate tax purposes, the gross estate generally includes the entire value of all property in which the decedent owned a joint interest except to the extent that it can be shown that the surviving joint owner provided consideration for the acquisition of the property. The Tax Reform Act of 1976 enacted an exception to this general rule in the case of joint interests of a husband and wife in property created after December 31, 1976. Under this exception, regardless of who provided the consideration for the property, only one-half of the value of the joint property is includable in the decedent's gross estate, if the following conditions are satisfied: (a) the joint interest was created by the decedent, the decedent's spouse or both; (b) In the case of personal property the creation of the joint interest constituted in whole or in part a gift for Federal gift tax purposes, or, in the case of real property, the spouse providing a majority of the

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27/ I.R.C. § 2040.

consideration elected to treat the creation of the joint interest as a gift for Federal gift tax purposes; (c) in the case of a joint tenancy, only the decedent and the decedent's spouse were joint tenants.

The new Act extends the benefits of the Tax Reform Act of 1976 to joint interests of a husband and wife that were created prior to January 1, 1977. By filing prior to death an election for any calendar quarter in 1977, 1978, or 1979 the spouse who provided all or most of the consideration for the jointly owned property can elect to have the creation of the joint interest treated as a gift for Federal gift tax purposes, and thereby qualify, under proper conditions, to have only one-half of the value of the joint interest includable for Federal estate tax purposes.

In the case of a qualifying joint interest created prior to January 1, 1977, in which the husband provided all of the consideration and where no portion of the consideration was previously treated as a gift to the wife, the amount of the gift resulting from the election would be one-half ( $\frac{1}{2}$ ) the equity value of the property at the close of the calendar quarter for which the election is made. The amount of the gift would be less if the wife provided a portion of the consideration, or if a portion of the consideration provided by the husband has been treated as a gift to her. <sup>28/</sup>

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<sup>28/</sup> I.R.C. § 2040.

Until recently Minnesota had a gift tax and an inheritance tax, but the 1979 Minnesota Legislature repealed the Minnesota Inheritance and replaced it with an estate tax. The Minnesota Gift Tax was also repealed, but was not replaced. The new estate tax applies to the estates of persons dying after December 31, 1979. <sup>29/</sup>

The estate tax is levied on the decedent's estate whereas the inheritance tax was levied on the decedent's heirs. The new tax law should greatly simplify death tax procedures in Minnesota.

A Minnesota estate tax return is required of residents dying after December 31, 1979 and before January 1, 1981 only if the Federal gross estate is in excess of \$161,000. For residents dying after December 31, 1980, no return is required unless the decedent's Federal gross estate is in excess of \$175,000.

The new Minnesota Estate Tax procedures are very similar to Federal Estate Tax procedures. The Minnesota tax reaches essentially the same property as the Federal tax with some minor differences. For example, the proceeds of certain life insurance policies issued by the United States government are specifically exempt from the Minnesota tax while they may be covered by the Federal tax. These policies include what is generally known as "war risk insurance" and servicemen's group life insurance. Certain qualified employee retirement plans are also exempt to the extent that they are included in the Federal gross estate.

<sup>29/</sup> See Minn. Stat. § 291.

The value of Minnesota taxable estate is the value of the decedent's Federal gross estate reduced by the combined value of four substantial classes of property. Therefore, the methods of valuing property for the Minnesota estate tax are the same as for the Federal tax. The Minnesota statute specifically provides that when real property used for farming or in a closely held business qualifies for valuation based on its actual use rather than its highest and best use as under section 2032A of the Federal Internal Revenue Code, "...it shall have the same value for Minnesota estate tax purposes as it has for Federal estate tax purposes."

The first step in computing the Minnesota estate tax is to complete the Minnesota taxable estate. And the Minnesota taxable estate is the decedent's Federal gross estate less the sum of:

(1) the value of gifts of real property located outside of Minnesota but included in the Federal gross estate because the gifts were made within three years prior to the decedent's death; (2) the value of any property owned by the decedent at the time of death but located outside Minnesota; (3) the exemptions and deductions allowed under the Minnesota estate tax statute; and (4) the sum of \$200,000 for residents. The \$200,000 sum is reduced for non-residents by the proportion of the value of their Federal gross estate which is located outside Minnesota.

One of the remarkable improvements made by the new Minnesota estate tax law is the simplification of the tax rates. The old gift and inheritance tax rates varied according to the relationship of



the donor to the donee(s) or the decedent to the heir(s) and according to the value of the gift or inheritance. Under the new law there is no gift tax and the estate tax is computed simply by applying to the Minnesota taxable estate, the following rates:

7 percent on the first \$100,000

8 percent on the next \$100,000 or part thereof.

9 percent on the next \$100,000 or part thereof.

10 percent on the next \$200,000 or part thereof.

11 percent on the next \$500,000 or part thereof.

and 12 percent on the excess over \$1,000,000.

However, the estate tax imposed cannot be less than the maximum tax credit allowable for state death taxes against the Federal estate tax imposed with respect to that part of the decedent's estate which is located in Minnesota.

The personal representative of the decedent's estate is responsible for filing both the Federal and Minnesota estate tax returns. When a Minnesota return is required, it must be filed with the Commissioner of Revenue within nine months after the decedent's death. Generally, the estate tax is due and payable at the end of that nine month period, however, any taxpayer who owes \$5,000 or more in taxes may choose to pay them in five equal installments over a period not to exceed five years from the date of the decedent's death. Certain time extensions are provided by the statute if the taxpayer qualifies for them.

The personal representative and the person to whom property subject to estate taxation is transferred are personally liable for the full payment of the tax to the extent of the value of the property.

C. Farm Name Recorded

Not unusually, because of the pride a farmer or rancher takes in his operation, he will name his farm or ranch. Under Minnesota law this farm name may be recorded.<sup>1/</sup> The farmer first chooses a specific name for his farm lands, and this is filed with the County Recorder (of any county where part of the land is located) along with a description of the land.<sup>2/</sup> Upon the payment of 50¢, this is recorded in a book provided for such purposes.<sup>3/</sup> No two names so designated and recorded can be alike in the same county.<sup>4/</sup>

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<sup>1/</sup> See Minn. Stat. § 386.36 (1976).

<sup>2/</sup> Minn. Stat. § 386.36 (1976).

<sup>3/</sup> Id.

<sup>4/</sup> Id.

### III. Commercial Aspects of Farming

Chapter III discusses those commercial aspects of farming which do not fit into another chapter. Section A discusses farm input procurement. Section B deals with Articles 2, 6 and 7 of the Uniform Commercial Code (Article 9 is discussed in Chapter I). Section C very briefly describes the law relating to commission merchants.

#### A. Farm Input Procurement.

This section of Chapter III discusses those farm input not covered by Chapter I (Farm Resources). The four areas discussed in this section are (1) seed law, (2) feed law, (3) fertilizers and soil conditioner law, and (4) plant and animal pest control law.

##### 1. Seed Law.

This section deals primarily with required labeling and unlawful acts in connection with the sale of agricultural seed. Section d discusses the powers and duties of the Commission of Agriculture in inspecting and testing agricultural seeds. Section e discusses corn growing zones and registration of corn seed. The Minnesota Screenings Act is discussed in section f. Section g discusses the seed potatoe certification program.

a. Labels

Every container of agricultural seed<sup>1</sup> sold, offered for sale, or transported within the state of Minnesota must have attached to it a conspicuous plainly written label.<sup>2</sup> These labels must contain certain specific information such as the commonly accepted name of the seed, the percentage by weight of all weed seeds (which cannot exceed 1%), percentage by weight of inert matter, etc.<sup>3</sup> Labels for tree and shrub seeds and for treated<sup>4</sup> seeds have different requirements as to the information they must contain.<sup>5</sup>

A tag or label on a bag of seed stating that it is a certain per cent pure is a warranty by the seller that the purity of the seed is as stated.<sup>6</sup>

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1. "Agricultural seeds" includes "the seeds of grass, forage, cereal, oil, fiber crops, seeds of vegetables grown for processing, and any other kinds of seeds commonly recognized within this state as agricultural or field seeds, lawn seeds, and mixtures of such seeds. Minn. Stat. § 21.47(5) (1976).
  2. Minn. Stat. § 21.48 (1976).
  3. Act of May 26, 1977, ch. 289, § 1, 1977 Minn. Sess. Law Serv. (West), amending Minn. Stat. § 21.48(3) (1976).
  4. "Treated" means "a process where any seed has received an application of a substance which is designed to reduce, control, or repel certain disease organisms, insects, or other pests attaching seeds or seedlings growing therefrom." Minn. Stat. § 21.47 (20) (1976).
  5. See Minn. Stat. § 21.48 (1976).
  6. Mallery v. Northfield Seed Co., 196 Minn. 129, 264 N.W. 573 (1936) (implied warranty of fitness for purpose intended).

b. Unlawful Acts

It is unlawful to sell agricultural seed if certain prohibitions are violated.<sup>7</sup> These prohibitions include improper labeling, false or misleading advertising, the presence of noxious-weed seeds, etc.<sup>8</sup>

It is also unlawful to:<sup>9</sup>

- (1) Alter or detach a label or to alter or substitute seed;
- (2) Disseminate any false or misleading advertisement;
- (3) Hinder an authorized person in the performance of his duties;
- (4) Fail to comply with a "stop-sale" order;
- (5) Use on a label, in an advertisement or in any other literature in connection with the description of seed the word "type".
- (6) To plant agricultural seed knowing it contains weed and noxious - weed seeds above certain limits.<sup>10</sup>

c. Exceptions to Labeling and Unlawful Acts.

The provisions of the law stated in a and b above do not apply (a) to seed not intended for sowing purposes, and (b) to seed in

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7. Act of May 26, 1977, ch. 289, § 2, 1977 Minn. Sess. Law Serv. (West), amending Minn. Stat. § 21.49(1) (1976).

8. Id. this statute also makes it an unlawful act to violate the provisions of the Plant Variety Protection Act, 7 U.S.C. §§ 1611, 2321 et seq.

9. Minn. Stat. § 21.49(2) (1976).

10. This applies even if the farmer grew the seed himself. Op. Atty. Gen., No. 2., p.33, 1930.

storage or consigned to a seed cleaning or processing establishment for cleaning and processing except that any labeling or representation made with respect to uncleaned or unprocessed seed is subject to the law.<sup>11</sup>

There is no penalty for the sale of seed which was incorrectly labeled or represented as to kind, variety, or origin, if the seeds cannot be identified by examination, and if the seller has an invoice or grower's declaration giving kind, variety and origin (if required), and has taken normal precautions to determine the identity of the seed to be as represented.<sup>12</sup>

d. Powers and Duties of the Commission of Agriculture.

The Commissioner has the duty to test seeds sold within the state to see that it complies with the law.<sup>13</sup> He has rule making authority over, among other things, governing the methods of sampling, inspecting, analyzing, testing and examining of seeds.<sup>14</sup> The Commissioner, or county weed and seed inspectors, may enter public or private premises during regular business hours in order to have access to seed and screenings subject to the law.<sup>15</sup>

Another power of the Commissioner is the power to issue and enforce

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11. Minn. Stat. § 21.50 (1976).

12. Id.

13. Minn. Stat. § 21.51(2) (1976).

14. Minn. Stat. §§ 21.51(3), 21.57 (1976).

15. Minn. Stat. § 21.51(4) (1976).

"stop-sale: orders to the owner of seed which is in violation of the law, and such an order prohibits further sale of the seed until the Law is complied with.<sup>16</sup> The owner of the seed can appeal a stop-sale order to a court.<sup>17</sup>

Other duties of the Commissioner include the duty to establish and maintain a seed laboratory for seed testing, to provide for purity and germination tests and to cooperate with the U.S. Department of Agriculture in seed law enforcement.<sup>18</sup> The Commissioner may also apply to a court for the seizure and subsequent denaturing, processing or destruction of seed found to be prohibited from sale by the law.<sup>19</sup>

To defray the costs of seed inspection, the Commissioner furnishes tags or stamps, and seed venders in the state must purchase these tags or stamps and attach them to each original container of seed.<sup>20</sup> In lieu of tags and stamps, the Commissioner may issue each vender a permit.<sup>21</sup> Under the permit system, the vender makes a quarterly statement with payments to

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16. Minn. Stat. § 21.51(5) (1976).

17. Id.

18. Minn. Stat. § 21.51 (6), (7), (8) (1976).

19. Minn. Stat. § 21.52 (1976)

20. Minn. Stat. § 21.53 (1976) as amended by Act of May 26, 1977, ch. 289, § 3, 1977 Minn. Sess. Law Serv. (West). Fees for stamps or tags range from 5¢ for 9-1/2 to 14 pound container to 10¢ for a 100 to 160 pound container. Id.

21. Minn. Stat. § 21.53 (4) (1976).



the Commissioner.<sup>22</sup>

If there is an acute shortage of seed in the state, or some other emergency, the Commissioner may temporarily change or alter requirements of the law relating to percentage of purity and weed seed content.<sup>23</sup>

e. Corn, Growing Zones.

The Director of the Agricultural Experiment Station of the University of Minnesota has established and identified corn growing zones throughout the state, and has published a list by zone which tells the approximate number of days (from emergency to maturity) of growing season is necessary for corn in each zones.<sup>24</sup>

A record of each hybrid seed field corn grain variety sold in the state must be registered with the Commission.<sup>25</sup> This record must include the day classification and the zone of adaptation which the owner declares to be the zone to which the variety is adapted.<sup>26</sup> This zone of adaptation

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22. Id. Under the permit system, the fees are lower: 2¢ per 100 pounds of cereal and 5¢ per 100 pounds of peas, flax or soy beans. Act of May 26, 1977, ch. 289, § 3, 1977 Minn. Sess. Law Serv. (West), amending Minn. Stat. § 21.53 (3) (1976).

23. Minn. Stat. § 21.56 (1976).

24. Minn. Stat. § 21.54(1) (1976).

25. Act of May 26, 1977, ch. 289, § 4, 1977 Minn. Sess. Law Serv. (West), amending Minn. Stat. § 21.54(2) (1976). The registration fee is \$15.00 per variety. Id.

26. Act of May 26, 1977, ch. 289, § 4, 1977 Minn. Sess. Law Serv. (West), amending Minn. Stat. § 21.54(2) (1976).

must be based on actual field tests.<sup>27</sup> The Commissioner can verify these tests by comparing the average kernel moisture at harvest time of the variety sought to be registered with the kernel moisture of corn grown in official comparative trials by the agricultural experiment station in that zone.<sup>28</sup>

f. Minnesota Screenings Act<sup>29</sup>

Screenings are chaff, florets, immature seed, weed seeds, inert matter, and other foreign material removed from seed or grain.<sup>30</sup> With certain exceptions, it is unlawful to feed, or to sell or transport for feeding purposes, any weed-seed infested agricultural seed, grains or screenings containing weed seeds in excess of legal limits or containing more than 10% total weed seeds by weight.<sup>31</sup> The exception include agricultural seed<sup>32</sup> not intended for feeding purposes, seed going to or coming from a cleaning establishment (if in leak proof containers), devitalized seed, seed being

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27. Id.

28. Minn. Stat. § 21.54(3) (1976). This section also describes acceptable variation in moisture content.

29. Minn. Stat. §§ 21.71-.78 (1976)

30. Minn. Stat. § 21.72(11) (1976).

31. Minn. Stat. § 21.73 (1976). It is also unlawful to disseminate misleading advertising concerning weed-seed infected seed, to hinder or obstruct an authorized person in the performance of his duties, or to fail to comply with a stop-sale order. Id.

32. As used here, seed also includes screenings or grains.

transferred among persons who mix or grind concentrated commercial feeding stuff for sale, seed sold to a consumer who possesses a permit and facilities to devitalize the seed, and seed produced by a farmer and fed on his own farm (if it does not contain weed seeds in excess of the legal limit).<sup>33</sup>

The Commissioner of Agriculture is charged with enforcing the Screenings Act, and is vested with certain power to accomplish this duty.<sup>34</sup> He can go to court to enjoin violations of the Act.<sup>35</sup> He may also go to court and have the seed seized.<sup>36</sup>

g. Seed Potatoes.

Seed potatoes are potatoes used, sold, offered for sale, or held with intent to sell for the purpose of planting.<sup>37</sup> It is the duty of the Commission of Agriculture to inspect, certify, promote the quality of and create a demand for the sale of seed potatoes.<sup>38</sup> He also appoints an advisory seed potato certification committee consisting of 6 certified seed potato growers.<sup>39</sup>

Certificates of inspection are issued only when seed potatoes have been inspected while growing and again after being harvested.<sup>40</sup> These

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33. Minn. Stat. § 21.74 (1976).

34. Minn. Stat. § 21.75 (1976).

35. Minn. Stat. § 21.76 (1976).

36. Minn. Stat. § 21.77 (1976).

37. Minn. Stat. § 21.111(5) (1976).

38. Minn. Stat. § 21.112 (1976)

39. Id.

40. Minn. Stat. § 21.113 (1976)

certificates show that the potatoes are free from disease and physical injury, and show the varietal purity of the potatoe.<sup>41</sup> It is unlawful to use the words "certified" or "inspected" unless the potatoes have been inspected, registered and certified according to the law.<sup>42</sup>

The fees for inspection and certification are set by the Commissioner.<sup>43</sup> The fee has to be sufficient to pay all necessary expenses of the seed potatoe certification program.<sup>44</sup>

Any person growing seed potatoes may request certification of his potatoes.<sup>45</sup>

The Commissioner has the authority to promulgate rules and regulations to carry out the certification program.<sup>46</sup>

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41. Id.

42. Minn. Stat. § 21.119 (1976); See Op. Atty. Gen., 135-B-6-H, Jan.31, 1933; Op. Atty. Gen., 135-B-6-H, Jan. 26, 1934. Any initial violation of this area of the law is a misdemeanor. Minn. Stat. § 21.122 (1976).

43. Minn. Stat. § 21.115 (1976).

44. See Minn. Stat. § 21.116 (1976).

45. Minn. Stat. § 21.117 (1976). Applications must be made by June 15 of each year; mail to Seed Potatoe Certification, State Office Building, St.Paul, Mn. 55155. 3 M.C.A.R. § 1, Minn. Reg. AGR122.

46. Minn. Stat. § 21.118; See 3 M.C.A.R. 1, Minn. Reg. AGR 121-35.

## 2. Commercial Feed Law

Commercial feed, as used in the Minnesota Commercial Feed Law,<sup>1</sup> means all unmixed and unadulterated<sup>2</sup> seed which are distributed for use as feed or for mixing in feed.<sup>3</sup> The term does not include raw meat, hay, straw, stover, silages, cobs, husks, hulls and individual chemical compounds when not intermixed or mixed with other materials if these commodities are not adulterated.<sup>4</sup>

This section discusses the registration, labeling, misbranding, adulteration, and inspection, plus prohibited acts associated with, commercial feed.

### a. Registration.

No person can manufacture commercial feed in Minnesota unless he has registered the feed with the Commissioner of Agriculture.<sup>5</sup> No person can distribute commercial feed, except a customer formula feed,<sup>6</sup>

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1. Minn. Stat. §§ 25.31-.45 (1976). The Commissioner of Agriculture has rule making authority to ensure the accomplishment of the purpose of this Act. Minn. Stat. § 25.40 (1970).
  2. "Unadulterated" means as described in Minn.Stat. § 25.37 (A), (B), (C), (D). Minn. Stat. § 25.33(5) (1976).
  3. Minn. Stat. § 25.33(5) (1976).
  4. Id.; 3 M.C.A.R. § 1, Minn. Reg. AGR 368(c). Adulterated is defined in Minn. Stat. § 25.37 (A), (B), (C), (D). Id.
  5. Minn. Stat. § 25.34(1) (1976).
  6. "Customer formula feed" is "commercial feed which consists of a mixture of commercial feeds or feed ingredients each batch of which is manufactured according to the specific instructions of the final purchaser." Minn. Stat. § 25.33(9) (1976).

which has not been properly registered.<sup>7</sup> The Commissioner may refuse or cancel registration of any commercial feed not in compliance with the law.<sup>8</sup>

b. Labeling.

Commercial feed, except customer formula feed, must be labeled and the label must contain, among other things, the net weight, the product name, the guaranteed analysis, and the common name of each ingredient used.<sup>9</sup> Customer formula feed must be labeled, and the label must contain, among other things, the name and address of the manufacturer, the date of delivery, and the product name and brand name (if any).<sup>10</sup>

c. Misbranding.

Commercial feed is misbranded if:<sup>11</sup>

- (a) The label is false or misleading;
- (b) It is distributed under the name of another commercial feed;
- (c) It is not labeled as required;
- (d) Any ingredient<sup>12</sup> does not conform to the definition, if any, prescribed by the Commissioner; or

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7. Minn. Stat. § 25.34 (1976).

8. Id.

9. Minn. Stat. § 25.35 (1976); 3 M.C.A.R. § 1, Minn. Reg. AGR 369.

10. Id.

11. Minn. Stat. § 25.36 (1976).

12. See 3 M.C.A.R. § 1, Minn. Reg. AGR 372.

(e) Any information required to appear on a label is not conspicuous and likely to be read and understood by an ordinary individual under customary conditions of purchase and use.

d. Adulteration.

Commercial feed is adulterated if:<sup>13</sup>

(a) It contains any poisonous substance which may be injurious to health;

(b) It contains any added substance which is unsafe within the meaning of § 406 of the Federal Food, Drug and Cosmetic Act (FFDCA)<sup>14</sup>, other than one which is a pesticide chemical in or on a raw agricultural commodity, or a food additive;

(c) It contains a food additive which is unsafe within § 409 of the FFDCA;<sup>15</sup>

(d) with certain exceptions, is a raw agricultural product which contains a pesticide chemical which is unsafe within the meaning of § 408(a) of the FFDCA;<sup>16</sup>

(e) It contains a color additive which is unsafe

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13. Minn. Stat. § 25.37 (1976); See 3 M.C.A.R. § 1, Minn. Reg. AGR 376.

14. 21 U.S.C. § 346.

15. 21 U.S.C. § 348.

16. 21 U.S.C. § 346(a).

within § 706 of the FFDCA;<sup>17</sup>

(f) Any valuable constituent has been in whole or in part omitted, or any less valuable substituted therefore;

(g) Its quality falls below that which it is represented to possess by its labeling;

(h) It contains a drug and the methods, facilities or controls used do not conform to current good manufacturing practice regulations;<sup>18</sup> or

(i) It contains viable weed seeds in excess of amounts established by the Commissioner.

e. Prohibited Acts.

The following acts are prohibited:<sup>19</sup>

(a) The manufacture or distribution of adulterated or misbranded commercial feed;

(b) The adulteration or misbranding of commercial feed;

(c) The distribution of agricultural commodities such as whole seed, hay, straw, stover, silage, cobs, husks, and hulls which

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17. 21 U.S.C. § 376.

18. See 3 M.C.A.R. § 1, Minn. Reg. AGR 377; 21 C.F.R. §§ 133.100-.110, .200-.210.

19. Minn. Stat. § 25.38 (1976).



are adulterated;

(d) The removal or disposal of detained<sup>20</sup> commercial feed;

(e) The failure or refusal to register; or

(f) Failure to pay inspection fees or file reports.

f. Inspection Fees and Reports.

The distributor of commercial feed to the consumer must pay a 16¢ per ton inspection fee, subject to certain exceptions.<sup>21</sup> These exceptions are when the fee has been paid by a previous distributor; when the fee is custom formula and a fee has been paid on the commercial feed ingredients thereof; when commercial feeds are used as ingredients for the manufacture of registered commercial feeds; and, when commercial feed is distributed only in packages of 10 pounds or less, an annual \$50 fee is paid in lieu of the inspection fee.<sup>22</sup>

The inspection fee is submitted to the Commissioner semiannually along with a tonnage report setting forth the number of tons of commercial

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20. See Minn. Stat. § 25.42 (1976); discussion in paragraph h, *infra*.

21. Minn. Stat. § 25.39(1) (1976).

22. Id.

feed distributed during the reporting period.<sup>23</sup> Each distributor is required to keep records of the tonnage of commercial feed distributed in the state, and these records are subject to inspection by the Commissioner.<sup>24</sup>

g. Inspection, Sampling and Analysis.

Designated employees of the Commissioner are empowered to enter property during business hours to inspect for compliance with the Minnesota Commercial Feed Law.<sup>25</sup> A separate notice is required for each inspection, but separate notice is not required for each entry during the period covered by the inspection.<sup>26</sup> Each inspection must be promptly conducted, and the person in charge of the facility or vehicle must be notified upon completion.<sup>27</sup>

If the owner or his agent refuses to admit the Commissioner or his agent, the Commissioner is authorized to obtain a warrant directing the owner or his agent to submit to inspection.<sup>28</sup>

The results of all analysis of samples must be provided to the person named on the label and to the purchaser.<sup>29</sup>

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23. Minn. Stat. § 25.39(2) (1976). A \$10 penalty is imposed for each report not filed within 30 days of the date when due. Id.

24. Minn. Stat. § 25.39(3) (1976).

25. Minn. Stat. § 25.41(1) (1976).

26. Minn. Stat. § 25.41(2) (1976).

27. Id. A receipt must be given for any sample obtained as a result of the inspection. Minn. Stat. § 25.41(3) (1976).

28. Minn. Stat. § 25.41(4) (1976).

29. Minn. Stat. § 25.41(7) (1976).

h. Detained Commercial Feeds.

If the Commissioner or his agent has had reasonable cause to believe that any lot of commercial feed is being distributed in violation of the law, he may issue and enforce a withdrawal from distribution order.<sup>30</sup> The Commissioner will release the lot of feed once the law has been complied with.<sup>31</sup> If there is no compliance within 30 days, the Commissioner may begin proceedings for condemnation.<sup>32</sup>

The Commissioner may seize, upon complaint to the district court, any lot of commercial feed not in compliance with the law.<sup>33</sup> If the court finds the feed in violation of the law, it will be disposed of in any manner consistent with the quality of the commercial seed and the laws of the state.<sup>34</sup>

i. Penalties.

A violation of the provisions of the commercial feed law is a misdemeanor.<sup>35</sup> So is impeding or hindering the Commissioner or his agent in the performance of his duties under these provisions of the law.<sup>36</sup>

The Commissioner is not required to institute seizure proceedings,

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30. Minn. Stat. § 25.42(1) (1976).

31. Id.

32. Id.

33. Minn. Stat. § 25.42(2) (1976).

34. Id.

35. Minn. Stat. § 25.43(1) (1976).

36. Id.

issue a withdrawal from distribution order, or report for prosecution a minor violation of the commercial feed law if he believes the public interest is best served by a notice or warning.<sup>37</sup> If a violation is reported to the County Attorney, he must cause appropriate proceedings to be instituted.<sup>38</sup> The Commissioner may apply to a district court to enjoin any violation of a commercial feed statute or regulation.<sup>39</sup>

Any person adversely affected by an act, order or ruling made pursuant to the commercial feed law can bring an action in district court for judicial review of the action.<sup>40</sup>

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37. Minn. Stat. § 25.43(2) (1976).

38. Minn. Stat. § 25.43(3) (1976).

39. Minn. Stat. § 25.43(4) (1976).

40. Minn. Stat. § 25.43(5) (1976); See Minn. Stat. §§ 15.0424-.0426 (1976).

### 3. Minnesota Fertilizer and Soil Conditioner Law.

The Minnesota Fertilizer and Soil Conditioner Law<sup>1</sup> is administered by the Commissioner of Agriculture.<sup>2</sup> The provisions of that law are discussed in the following sections of this outline. The topics addressed are: (a) registration, (b) licenses, (c) labeling and guaranteed analysis, (d) reports, (e) inspection, sampling and analysis, (f) pesticide mixtures, (g) plant food content, (h) adulteration, (i) false and misleading statements, (j) stop sale orders, (k) seizure and condemnation, (l) violations and penalties, and (m) exchange between manufacturers.

#### a. Registration.

All fertilizer brands and grades sold only as small package<sup>3</sup> items or represented as a specialty fertilizer<sup>4</sup> and soil

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1. Minn. Stat. §§ 17.711-.729 (1976).
  2. Minn. Stat. § 17.712 (1976). The Commissioner is empowered to promulgate regulations to administer this act. Minn. Stat. § 17.725 (1976); See 3 M.C.A.R. § 1, Minn. Reg. AGR 213-347.
  3. "Small package fertilizer" is fertilizer material sold exclusively in 25 pound packages or less. Minn. Stat. § 17.713(18) (1976). "Fertilizer is a substance containing nitrogen, phosphorus, potassium or any recognized plant food nutrient, or any compound which is used primarily for its plant nutrient content or for compounding mixed fertilizers except unmanipulated animal and vegetable manures." Minn. Stat. § 17.713(6) (1976).
  4. "Specialty fertilizer" means "any commercial fertilizer, distributed primarily for use on crops grown for noncommercial purposes such as gardens, lawns, shrubs, golf courses, municipal parks, cemeteries, greenhouses, and nurseries, and may include fertilizers used for research and experimental purposes." Minn. Stat. § 17.713 (20) (1976).

conditioners<sup>5</sup> sold with recommendations for commercial agricultural use must be registered with the Commissioner of Agriculture.<sup>6</sup> Each application for registration of a small package fertilizer or a specialty fertilizer must be accompanied by a registration and inspection fee of \$50 for each brand and grade to be distributed.<sup>7</sup> Each application for registration of a soil conditioner must be accompanied by a registration and inspection fee of the same amount for each brand distributed.<sup>8</sup> Any fee paid is in lieu of other license or tonnage fees.<sup>9</sup>

The registration applications must include certain information, and this information is different for soil conditioners than it is for fertilizers.<sup>10</sup> The application must be accomplished by a label or label

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5. "Soil condition" means "any aggregant or additive or any synthetic organic chemical substances, or chemically or physically modified natural substances, or naturally occurring substance, or manufacturing by-products, mixed or unmixed, which are represented as having a primary function of forming or stabilizing soil aggregants in soil to which it is to be applied and thereby improving the resistance of such soil to the action of water, increasing its water and air permeability, improving the resistance of its surface to crusting, improving its ease of cultivation, or otherwise favorably modifying its structural or physical properties." Minn. Stat. § 17.713(19) (1976).
  6. Minn. Stat. § 17.714(1) (1976).
  7. Minn. Stat. § 17.717(3) (1976).
  8. Minn. Stat. § 17.717(4) (1976).
  9. Minn. Stat. § 17.714(1) (1976).
  10. See Minn. Stat. § 17.714(2) (1976). Fertilizer applications must include the guaranteed analysis (see Minn. Stat. § 17.718(8)) and the sources from which the elements are derived, while soil conditioner applications must give the sources from which ingredients used in the product are derived. Id.

facsimile of each product for which registration is requested.<sup>11</sup> The Commissioner may also require the submission of authentic experimental evidence.<sup>12</sup> A registration may not be transferred to another person or location.<sup>13</sup>

b. Licenses.

Any person who manufactures, blends, mixes or otherwise manipulates a commercial fertilizer material must obtain a license from the Commissioner for each location where these operations are performed.<sup>14</sup> If the fertilizer material is manipulated by means of a mobile mechanical unit, a license is required for each such unit.<sup>15</sup> A license is not transferable to another location or to a transferee of a fertilizer operation.<sup>16</sup>

License fees are as follows:<sup>17</sup> for each fixed location within the state, \$50; for all fixed locations outside of the state, \$50; and for mobile mechanical units, \$50 for the first and \$25 thereafter. There is also an inspection fee of 10¢ per ton on all commercial fertilizers offered for

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11. Minn. Stat. § 17.714(3) (1976).

12. Minn. Stat. § 17.714(4) (1976).

13. Minn. Stat. § 17.714(5) (1976).

14. Minn. Stat. § 17.715 (1976). One license is also required for all fixed locations which are located outside of the state. Id.

15. Minn. Stat. § 17.715 (1976).

16. Id.

17. Minn. Stat. § 17.717(1) (1976).

sale, sold or distributed.<sup>18</sup>

c. Labeling, Guaranteed Analysis.

Any commercial fertilizer offered for sale, sold or distributed must have a label attached which sets forth(a) the net weight, (b) the brand and grade of the fertilizer,<sup>19</sup> (c) the guaranteed analysis,<sup>20</sup> and (d) the name and address of the guarantor.<sup>21</sup> This label must be attached on the face or display side of the container, the upper end or upper one-third of the side of the container, or attached by tag to the upper end of the container.<sup>22</sup>

If a distributor mixes fertilizer materials to a customer's order without a guaranteed analysis of the final mixture, he must furnish the

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18. Minn. Stat. § 17.717(5) (1976).

19. If the commercial fertilizer is used exclusively for agricultural purposes, the label need not include the grade if the guaranteed analysis statement is properly attached. Minn. Stat. § 17.716(1) (1976); See Minn. Stat. § 17.713(8) (1976).

20. "Guaranteed analysis" means the percentage of plant nutrient content, in the following order:

Total nitrogen	_____	%
Available phosphoric acid	_____	%
Soluble potash	_____	%

For certain other materials, the total phosphoric acid or degree of fineness may be guaranteed. Minn. Stat. § 17.713(8) (1976). Subdivision 2 of this statute is not in effect, and the hearings have not been held. Telephone conversation with fertilizer division of State Department of Agriculture on 9-21-77.

21. Minn. Stat. § 17.716(1) (1976).

22. Id. If distributed in bulks, the required data must accompany each delivery and be supplied the purchaser at the time of delivery. Minn. Stat. § 17.716(3) (1976).



purchaser with an invoice or delivery ticket showing the net weight and guaranteed analysis of each of the materials used in the mixture.<sup>23</sup>

The plant food content of a given lot must remain uniform.<sup>24</sup>

d. Tonnage Report.

Every licensed distributor of commercial fertilizer and each registrant of the same or soil conditioner must file a semiannual report with the Commissioner setting forth the number of net tons of each grade of fertilizer or conditioner distributed during the reporting period.<sup>25</sup> The inspection fee discussed earlier should go in with this report.<sup>26</sup> A 10% penalty (with a minimum penalty of \$10) is assessed against a licensee or registrant who does not file within the allotted 30 days.<sup>27</sup> Submission of this report authorizes the Commissioner to verify the records upon which it is based.<sup>28</sup>

When more than one person's involved in the distribution of a commercial fertilizer, the last person licensed or who has the fertilizer registered is responsible for the inspection fee unless it has been paid

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23. Minn. Stat. § 17.716(2) (1976).

24. Minn. Stat. § 17.716(4) (1976).

25. Minn. Stat. § 17.718(1) (1976). The reporting periods end on December 31 and June 30, and the reports are due 30 days thereafter. Id.

26. Minn. Stat. § 17.718(1) (1976).

27. Id. This does not prevent the Department from taking other actions provided by this chapter. Id.

28. Minn. Stat. § 17.718(3) (1976).

by a prior distributor.<sup>29</sup>

e. Inspection, Sampling and Analysis.

The Commissioner is authorized to inspect, test or analyze all commercial fertilizers and soil conditioners offered for sale in the state to the extent that such is necessary to ensure that these fertilizers and conditioners are in compliance with the Fertilizer and Soil Conditioner Law.<sup>30</sup> This authorization allows the Commissioner, or his agent, to enter upon public or private premises during regular business hours in order to have access to fertilizers and conditioners subject to this Law.<sup>31</sup> After entering, the Commissioner may draw a sample for future analysis.<sup>32</sup>

f. Pesticide Mixtures.

Every distributor who mixes pesticides with fertilizer materials or with conditioners must be licensed as provided above, and must register the mixture.<sup>33</sup> The statute involved requires that the mixture be registered pursuant to Minn. Stat. §§ 24.069-.077, but these sections have been repealed, so it is not clear how mixtures must be registered.

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29. Minn. Stat. § 17.718(2) (1976).

30. Minn. Stat. § 17.719(1) (1976).

31. Id.

32. Minn. Stat. § 17.719(2), (3) (1976).

33. Minn. Stat. § 17.72 (1976).

This probably means that these mixtures are not exempt from the registration provision for custom blending with the use of pesticides.<sup>34</sup>

g. Plant Food Content.

The following products cannot be sold:<sup>35</sup> (a) a nitrogen product containing less than 18% total nitrogen, (b) a super phosphate containing less than 18% available phosphoric acid, or (c) a mixed dry fertilizer in which the sum of the guarantees for nitrogen, available phosphoric acid and soluble potash totals less than 24%. For all mixed fertilizers containing 1/4 or more of their nitrogen in water-insoluble form of plant or animal origin, the total nitrogen, phosphoric acid and soluble potash must not total less than 18%.<sup>36</sup>

These provisions do not apply to specialty fertilizer which is clearly marked for noncommercial use.<sup>37</sup>

h. Adulteration.

It is illegal to distribute an adulterated fertilizer or soil conditioner product.<sup>38</sup> A fertilizer or conditioner is adulterated if (a) it contains a harmful ingredient in sufficient amount to render it

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34. See Minn. Stat. § 17.72 (1976).

35. Minn. Stat. § 17.721 (1976).

36. Id.

37. Id.

38. Minn. Stat. § 17.723 (1976).

injurious to plant life when applied in accordance with directions on the label, (b) its composition is below or differs from that which it is purported to possess by its label, or (c) it contains unwanted crop seed or weed seed.<sup>39</sup>

i. False and Misleading Statements.

A commercial fertilizer or soil conditioner is misbranded if it carries a false or misleading statement on the container, or if the false or misleading statement is disseminated in any manner.<sup>40</sup> It is, of course, illegal to distribute a misbranded fertilizer or soil conditioner.<sup>41</sup>

j. Stop Sale Orders.

The Commissioner will issue a "stop sale, use or removal" order to the owner or custodian of any lot of conditioner or fertilizer offered for sale in violation of the Fertilizer and Soil Conditioner Law.<sup>42</sup> The owner or custodian must then hold the fertilizer or conditioner until the law has been complied with and it is released by the Commissioner, or otherwise legally disposed of.<sup>43</sup>

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39. Id.

40. Minn. Stat. § 17.722 (1976).

41. Id.

42. Minn. Stat. § 17.726 (1976).

43. Id.

k. Seizure, Condemnation & Sale.

The Commissioner can seize, upon complaint to a court, any fertilizer or conditioner not in compliance with the law.<sup>44</sup> If the court finds the fertilizer or conditioner in violation of the law, it can order it condemned and disposed of in any manner consistent with the law.<sup>45</sup>

1. Violations and Penalties.

The Commissioner has the power to cancel or refuse a registration or to cancel a license for any fraudulent or deceptive practice in the evasion, or attempted evasion, of the Fertilizer and Soil Conditioner Law.<sup>46</sup> But the Commissioner is not required to (1) report for prosecution, (2) institute seizure proceedings, or (3) issue a stop sale order, as a result of a minor violation if he believes the public interest will be best served by notice of warning in writing.<sup>48</sup>

m. Exchange Between Manufacturers.

The Fertilizer and Soil Conditioner Law does not restrict or avoid sales or exchanges of fertilizers or conditioners to each other by importers, manufacturers or manipulators who mix fertilizer materials or conditioners for sale.<sup>49</sup>

44. Minn. Stat. § 17.727 (1976).

45. Id.

46. Minn. Stat. § 17.728 (1976).

47. Id.

48. Id.

49. Minn. Stat. § 17.729 (1976).

4. Plant and Animal Pest Control.

This section of the outline discusses plant and animal pest control. The topics discussed are, (a) local pest control, (b) noxious weeds, (c) hemp control, (d) Barberry & Mahonia bushes, (e) plant pest act, (f) interstate pest control compact, (g) structural pest control.

a. Local Pest Control.

The purpose of the Local Pest Control Act<sup>1</sup> is to authorize political subdivisions to establish their own programs to control pests that may be detrimental to the health and welfare of man or animals and to the environment.<sup>2</sup>

The act authorized political subdivisions of the state, when recommended to do so by the Commissioner of Agriculture, to appropriate money for the control of insect pests,<sup>3</sup> plant diseases, bee diseases or destructive or nuisance animals.<sup>4</sup> The governing body of the political subdivision is authorized to levy a special tax to defray the cost of such

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1. Minn. Stat. §§ 18.0120.022 (1976).

2. Minn. Stat. § 18.012 (1976).

3. "Insect pest" includes "grasshoppers, cut worms, army worms, European corn borers, Japanese beetles, European elm bark beetles, native elm bark beetles, forest tent caterpillars, bee diseases, and other insects which the commissioner may designate as dangerous to the welfare of the people. Minn. Stat. § 18.021(2) (1976).

4. Minn. Stat. § 18.022(1) (1976).

activities.<sup>5</sup>

Cities and counties are also authorized to pass ordinances or regulations to control the spread of plant pests and diseases.<sup>6</sup> If the city or county does not attempt to control Dutch elm disease, the Commissioner of agriculture may do so and the cost is a charge on the political subdivision.<sup>7</sup>

Governmental units also have the power to engage in mosquito abatement.<sup>8</sup>

b. Noxious Weeds.

Noxious weeds are annual, biennial, and perennial plants deemed by the Commissioner of Agriculture to be injurious to public health, public roads, crops, livestock or other property.<sup>9</sup> It is the duty of every occupant of land or, if the land is unoccupied, the owner, to destroy all noxious weeds growing upon such land, in such manner and at such times as directed by the Commissioner, the county agricultural inspector or

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5. Minn. Stat. § 18.022(2) (1976).

6. Minn. Stat. § 18.022(6) (1976).

7. Minn. Stat. § 18.022(7), .48 (1976); see Minn. Stat. § 18.023 (1976).

8. See Minn. Stat. §§ 18.041-.161 (1976).

9. Minn. Stat. § 18.171(5) (1976); See 3 M.C.A.R. § 1, Minn. Reg. AGR 182-83. Examples of noxious weeds are leafy spurge, Australian field cress, bindweed, perennial pepper grass, wild radish, sow thistle, Canadian thistle, and hoary alyssum. See Minn. Stat. § 18.241(2) (1976).

a local weed inspector having jurisdiction.<sup>10</sup>

Railroads have a duty to control noxious weeds on their right of way and on adjoining land." Road authorities have the same duty along their respective highways.<sup>12</sup> Any person owning or operating, harvesting equipment has a duty to see that it is cleaned immediately after it is used for threshing grain or seed.<sup>13</sup>

County commissioners appoint county agricultural inspectors, when requested to do so by the Commissioner, whose duties are to see that the laws and regulations dealing with weed control and seed inspection are carried out, and to participate in insect and plant disease, economic poison, feed, and fertilizer programs.<sup>14</sup> The members of town boards act as local weed inspectors within their respective towns,<sup>15</sup> and the mayor (or president) of a municipality is local weed inspector within his municipality.<sup>16</sup>

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10. Minn. Stat. § 18.191 (1976). This includes noxious weeds growing within county or judicial ditches running through ones land. Op. Atty. Gen., 322g, Sept. 5, 1963.
  11. Minn. Stat. § 18.201 (1976).
  12. Minn. Stat. §§ 18.211, 160.23 (1976).
  13. Minn. Stat. § 18.221 (1976).
  14. Minn. Stat. § 18.231(1) (1976).
  15. Minn. Stat. § 18.231(2) (1976).
  16. Minn. Stat. § 18.231(3) (1976). Minneapolis is an exception; it appoints an employee of the city as local weed inspector. Minn. Stat. § 18.231 (3a) (1976).



It is the duty of each local weed inspector to examine all lands, highways, roads, alleys, and public ground in the territory to see if noxious weeds are being eradicated, and if they are not, to give notice in writing to the appropriate person requiring that person to have the weeds cut down.<sup>17</sup> A local, county, or state weed inspector must issue a permit before anyone can transport materials containing seeds or other propagating parts of noxious weeds.<sup>18</sup>

Local weed inspectors and county agricultural inspectors may, upon following certain procedures, have a growing crop destroyed if such is necessary to prevent the spread of noxious weeds within the jurisdiction.<sup>19</sup> No claim for damages is allowed against anyone in respect to such an action.<sup>20</sup>

If a person fails to eradicate noxious weeds after notice requiring him to do so, a weed inspector may have them destroyed at the expense of the county, and the amount of such expenses is a lien in favor of the county against the land involved.<sup>21</sup> If eradication of the weeds is beyond

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17. Minn. Stat. § 18.241(1) (1976). Notice may be either general (by newspaper) or individual. See Minn. Stat. § 18.271 (1976).

18. Minn. Stat. § 18.241(2) (1976). For exceptions see Minn. Stat. § 21.74.

19. Minn. Stat. § 18.251 (1976).

20. Id.

21. Minn. Stat. § 18.271(3) (1976). A county agricultural inspector may provide for the destruction of Cannabis Sativa L at county expense. Minn. Stat. § 18.271(3a) (1976).

the control of the land occupant or owner, the Commissioner may quarantine such land and implement whatever measures are necessary to eradicate the weeds.<sup>22</sup> The expenses of this type of eradication are paid for by one or another of governmental subdivisions.<sup>23</sup>

c. Hemp Control.

Hemp (*cannabis sativa* L) may be grown for commercial purposes only.<sup>24</sup> Commercial uses include the manufacture of rope, sacks, yard, thread, cloth, etc.<sup>25</sup> Growers of hemp must be licensed by the Commissioner.<sup>26</sup> Licenses must notify the Commissioner of the sale of hemp, and the names of the persons to whom the hemp is sold.<sup>27</sup>

d. Barberry and Mahonia Bushes.

Barberry and mahonia bushes, except the Japanese barberry (*Barberis thunbergii*), are a public nuisance and their maintenance, propagation, sale, or introduction into the state is forbidden.<sup>28</sup> Landowners

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22. Minn. Stat. § 18.291 (1976). The Commissioner must give written notice of the entry and quarantine and of the completion of the project. Minn. Stat. § 18.301 (1976).

23. See Minn. Stat. § 18.311 (1976).

24. Minn. Stat. § 18.321 (1976).

25. Id.

26. Id.

27. Minn. Stat. § 18.322 (1976).

28. Minn. Stat. § 18.331 (1976). The Minnesota Supreme Court has held that this Legislative declaration of a nuisance is presumptively valid, but not conclusive. *Olson v. Guilford*, 174 Minn. 457, 219 N.W. 770 (1928).

and occupiers have a duty to destroy these bushes.<sup>29</sup> If the Commissioner, or his agent, finds barberry or Mahonia bushes on someone's property, he will immediately notify the owner or occupant, and the owner or occupant must immediately destroy the bushes.<sup>30</sup>

e. Plant Pest Act.

The purpose of the Plant Pest Act<sup>31</sup> is to prevent the introduction into and the propagation and dissemination within the state of plant pests.<sup>32</sup>

The Commission, or his employees, is empowered to enter and inspect any public or private place which might harbor plant pests and to require that the owner destroy or treat plant pests, plants or other materials.<sup>33</sup> If the owner fails to properly comply, the Commissioner may have any necessary work done at the owner's expense.<sup>34</sup> The Commissioner has the

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29. Id.

30. Minn. Stat. § 18.333 (1976). This statute also describes how costs will be allocated if the owner fails to cut the bushes, and an appropriate government official does so. A violation of this section of the law is a misdemeanor. Minn. Stat. § 18.335 (1970).

31. Minn. Stat. §§ 18.44-.61 (1976).

32. Minn. Stat. § 18.45 (1976). "Plant pests" include "any form of plant or animal life, including any disease producing organism dangerous to plants in the state." This includes alternate hosts of any plant disease. Minn. Stat. § 18.46(13) (1976).

33. Minn. Stat. § 18.48 (1976).

34. Id.

power to take any measures necessary to prevent dangerous plant pest infestation, including a quarantine prohibiting the transportation of plants and other materials capable of carrying plant pests into the state.<sup>35</sup>

Nursery stock cannot be sold, (a) unless it has been inspected and found free of plant pests within the past 12 months, and (b) to a dealer who does not have a valid certificate of inspection or dealer's certificate.<sup>36</sup> All nursery stock offered for sale must be in sound healthy condition.<sup>37</sup>

It is a violation of the Plant Pest Act for any person to:<sup>38</sup>

- (1) hinder the Commissioner or his employees when they are carrying out their duties under the Act;
- (2) sell, transport or offer for sale nursery stock which has not been inspected and certified;
- (3) fail to carry out treatment or destruction of condemned plants;

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35. Id.

36. Minn. Stat. § 18.49 (1976). These certificates are required by Minn. Stat. §§ 18.51, .52 (1976). The fee for a certificate of inspection ranges from \$15 for a nursery of 1/2 acre or less to \$300 for a 50 acre nursery. Minn. Stat. § 18.51(2) (1976). Dealers' and agents certificates are based on gross sales and range from \$25 per location to \$200 per location. Minn. Stat. § 18.52(5) (1976). Greenhouses will be inspected at the request of the owner, for a \$25 fee, to certify that they are free from plant pests. Minn. Stat. § 18.53 (1976). Certification reciprocity may exist with different states. See Minn. Stat. § 18.55 (1976).

37. Minn. Stat. § 18.50 (1976).

38. Minn. Stat. § 18.59 (1976).

- (4) use an invalid certificate of inspection;
- (5) misrepresent or mislabel nursery stock;
- (6) violate a quarantine;
- (7) fail to comply with the provisions of the act or regulations promulgated thereunder;
- (8) possess nursery stock without a valid certificate of inspection or dealer's certificate.

A violation of the Act, or rule promulgated thereunder is a misdemeanor, and any person violating the provisions of the Act can have his certificate suspended or revoked.<sup>39</sup>

f. Interstate Pest Control Compact.

Minnesota has adopted the Interstate Pest Control Compact.<sup>40</sup>

The migratory nature of pest infestations made it necessary for states to complement each others activities when faced with conditions of infestation and reinfestation.<sup>41</sup>

The Compact provides for an Insurance Fund from which the individual states may obtain financial support for pest control programs.<sup>42</sup>

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39. Minn. Stat. § 18.60 (1976).

40. Minn. Stat. § 18.62 (1976); see Minn. Stat. §§ 18.63-.11 (1976).

41. See Minn. Stat. § 18.62, art. I (1976).

42. See Minn. Stat. § 18.62 (1976).

g. Structural Pest Control.

Every pesticide<sup>43</sup> offered for sale, sold or distributed in the state must be registered with the Commissioner.<sup>44</sup> The registration application must include certain information,<sup>45</sup> and the Commissioner may even require the submission of the complete formula of any pesticide including its inert ingredients.<sup>46</sup>

No person can sell a restricted use pesticide unless he has a license from the Commissioner.<sup>47</sup> A commercial applicator must have a commercial applicator's license issued by the Commissioner before he can use or supervise the use of any pesticide.<sup>48</sup> No person can engage in structural pest control<sup>49</sup> applications unless registered or licensed by

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43. "Pesticide" means "any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant. Minn. Stat. § 18A.21(25) (1976).

44. Minn. Stat. § 18A.22 (1976). Each application for registration or renewal must be accompanied by a fee of \$10 for each pesticide registered. Minn. Stat. § 18A.22(5) (1976).

45. See Minn. Stat. § 18A.22(2) (1976). If the pesticide is to meet special local needs certain prior determinations must be made. See Minn. Stat. § 18A.24 (1976).

46. Minn. Stat. § 18A.22(3) (1976).

47. Minn. Stat. § 18A.26(1) (1976). The same license is required of any private applicator purchasing from an unlicensed source. Id.

48. Minn. Stat. § 18A.26(2) (1976).

49. A "structural pest" is one that is "in, on, under, or within six feet of any structure." Minn. Stat. § 18A.22(32) (1976). "Structural pest control" means "to control any pest through the use of any device, procedure, or application of pesticide in any house or in other structures including truck, boxcars, ships, aircraft, docks, warehouses, and in fumigation vaults, and all business activity related to the use of the device, procedure, or application of pesticide." Minn. Stat. § 18A.22(33) (1976).

the Commissioner.<sup>50</sup> A noncommercial applicator cannot use a restricted use pesticide, or supervise the use of such, unless he has a noncommercial applicator license issued by the Commissioner.<sup>51</sup>

Licenses must make periodic reports to the Commissioner.<sup>52</sup> Specific procedures are set up for asserting a claim of damage from the application of a pesticide.<sup>53</sup> These statutes dealing with the storage and handling of pesticide,<sup>54</sup> inspections by the Commissioner to ensure compliance with the law,<sup>55</sup> and with protection of trade secrets.<sup>56</sup> There is a financial responsibility requirements.<sup>57</sup>

The Commissioner is granted powers to contain and control pesticides involved in an emergency.<sup>58</sup> An emergency is an incident (e.g., flood, fire, tornado) which is likely to cause adverse effects on the environment.<sup>59</sup>

The sale or use of pesticides containing certain compounds is prohibited. (TCDD).<sup>60</sup>

A violation of this section of the law is a misdemeanor; subsequent violations are a gross misdemeanor.<sup>61</sup>

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50. Minn. Stat. § 18A.26(3) (1976).

51. Minn. Stat. § 18A.26(4) (1976).

52. See Minn. Stat. § 18A.28 (1976).

53. See Minn. Stat. § 18A.30 (1976); Minn. Stat. § 18A.42 (1976).

54. Minn. Stat. § 18A.31 (1976).

55. See Minn. Stat. § 18A.32 (1976).

56. See Minn. Stat. § 18A.35 (1976).

57. See Minn. Stat. § 18A.36 (1976).

58. Minn. Stat. § 18A.37 (1976).

59. Id.

60. See Minn. Stat. § 18A.48 (1976).

61. Minn. Stat. § 18A.45 (1976).

B. Uniform Commercial Code

This section of Chapter III discusses the Uniform Commercial Code<sup>1/</sup> (UCC) and its application to agriculture. Article 9 of the UCC, which deals with secured transactions, is discussed in the Credit Section of Chapter I. The primary focus of the following material is on Article 2, sales, but also addressed are Articles 6 and 7 which deal with bulk transfers and documents of title. Some discussion is devoted to packing house receipts, which are not covered by Article 7. The other articles of the code<sup>2/</sup> do not have as direct an impact on agriculture.

The UCC is, as its title indicates, a consolidation of the law of commercial transactions. Its purpose is to simplify and clarify the law governing commercial transactions; to permit continued expansion of commercial practices through custom, usage, and agreement; and to make uniform the laws of the different states.<sup>3/</sup> The provisions of the UCC can, unless the statute involved specifically prohibits it, be varied by agreement.<sup>4/</sup>

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<sup>1/</sup> Minn. Stat. §§ 336.1 - .10 (1976).

<sup>2/</sup> Other articles of the code deal with commercial paper, bank deposits and collections, letters of credit, and investment securities.

<sup>3/</sup> See Minn. Stat. § 336.1 - 102(2) (1976).

<sup>4/</sup> Minn. Stat. § 336.1 - 102(3), (4) (1976)



1. Sales--Article 2

Article 2 applies to transactions in goods.<sup>5/</sup> "Goods" means all things which are movable at the time of identification to the contract for sale other than money.<sup>6/</sup> The term also includes two things which are not movable and which have agricultural significance: the unborn young of animals and growing crops and other identified things attached to realty as described in § 2-107.<sup>7/</sup> Section 2-107(2) says that things attached to realty are "goods" if they can be severed without material harm to the land, regardless of whether they are severed by the buyer or the seller, and even though it forms part of the realty at the time of contracting.<sup>9/</sup>

Article 2 also provides that an undivided share of an identified bulk of fungible goods,<sup>10/</sup> such as grain, is sufficiently identified to be sold even though the quantity of the bulk is not determined.<sup>11/</sup> Any agreed proportion of such a bulk agreed upon by number, weight or other measure may be sold, and the buyer then becomes an owner in common.<sup>12/</sup>

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<sup>5/</sup> Minn. Stat. § 336.2-102 (1976). It does not apply to a transaction intended to operate as a security transaction, nor does it impair or repeal any statute which regulates sales to farmers. Id.

<sup>6/</sup> Minn. Stat. § 336.2 - 105(1) (1976).

<sup>7/</sup> Id. Growing crops are included within the definition of goods because they are frequently intended for sale. Minn. Stat. § 336.2 - 105, cmt. 1 (1976). This includes fruit, perennial hay and nursery stock. Id. The young of animals are also included because they are frequently intended for sale and may be contracted for before birth. Id. Wool or the like are goods within this article. Id.

<sup>8/</sup> Minn. Stat. § 336.2 - 107(2) (1976).

<sup>9/</sup> This statute excludes timber, and separate provisions apply to minerals.

<sup>10/</sup> "Fungible" means goods "of which any unit is, by nature or usage of trade, the equivalent of any other unit." Minn. Stat. § 336.1 - 201(17) (1976).

<sup>11/</sup> Minn. Stat. § 336.2 - 105(4) (1976).

<sup>12/</sup> Id.

Thus, article 2 applies to almost any commodity which a farmer might sell.

a. Identification

Saels transactions involving unascertained or future goods, such as crops to be grown or unborn young of animals, present identification problems.<sup>13/</sup> Goods cannot pass under a contract for sale prior to identification to the contract.<sup>14/</sup> Identification may be made at any time and in any manner explicitly agreed upon by the parties.<sup>15/</sup> If no explicit identification is made, it occurs when the crops are planted or otherwise become growing crops if the contract is for the sale of crops to be harvested within 12 months or the next harvest season after contracting, whichever is longer.<sup>16/</sup> For the sale of unborn young to be born within 12 months after contracting, identification occurs when the young are conceived.<sup>17/</sup> Thus a property interest under Article 2 passes when crops are planted or when young are conceived.

The seller of goods retains an insurable interest in them so long as title to, or any security interest, remains in him.<sup>18/</sup>

When a farmer has contracted to sell crops to be grown on designated land, and there is a failure of that crop, he may be excused either on the basis of the destruction of identified goods or because of the failure of a basic assumption of the contract.<sup>19/</sup>

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<sup>13/</sup> Under Minn. Stat. § 336.2 - 105(2) (1976), goods must be existing and identified before any interest in them can pass. Goods which are not both existing and identified are future goods. A present sale of future goods, or of any interest therein, operates as a contract to sell.

<sup>14/</sup> Minn. Stat. § 336.2 - 401(1) (1976).

<sup>15/</sup> Minn. Stat. § 336.2 - 501(1) (1976).

<sup>16/</sup> Id.

<sup>17/</sup> Id.

<sup>18/</sup> Minn. Stat. § 336.2 - 501(2) (1976).

<sup>19/</sup> Minn. Stat. § 336.2 - 615, emt. 9 (1976), see Minn. Stat. § 336.2 - 613 (1976).

b. Statute of frauds

A contract for the sale of goods for \$500 or more must be in writing (some writing sufficient to indicate a contract for sale) to be valid, and it must be signed by the party against whom enforcement is sought.<sup>20/</sup> For example, when a farmer staunchly denies the existence of an oral agreement to sell corn, the statute of frauds will bar the purchaser's action to enforce such an agreement.<sup>21/</sup>

Equitable estoppel supplements the statute of frauds and may take a contract out of the statute of frauds. But where an elevator relied on an oral agreement for the purchase of grain in making its resale of grain, and the farmer did not make any misrepresentations or conceal material facts and did not deceive, defraud or otherwise take advantage, but merely failed to deliver the grain, the farmer will not be estopped from asserting the statute of frauds.<sup>22/</sup>

Under part performance exception to the statute of frauds, it is necessary that goods "have been received and accepted" before avoidance of the statute is recognized.<sup>23/</sup> Thus a buyer who had received only a portion of soybeans in a bin, which beans were sold under an oral contract, was precluded by the statute of frauds from recovering from the seller for damages for failure to deliver the beans remaining in the bin even though he could prove that the "bin of beans" was a commercial unit and that acceptance of any part of the bin by the buyer constituted acceptance of the entire bin.<sup>24/</sup>

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<sup>20/</sup> Minn. Stat. § 336.2-201 (1976).

<sup>21/</sup> Jurek v. Thompson, \_\_\_\_\_ Minn. \_\_\_\_\_, 241 N.W. 2d 788 (1976).

<sup>22/</sup> Sacred Heart Farmers Coop Elevator v. Johnson, 305 Minn. 324, 232 N.W. 2d 921 (1975).

<sup>23/</sup> Del Hayes & Sons, Inc. v. Mitchell, 304 Minn. 275, 230 N.W. 2d 588 (1975).

<sup>24/</sup> Id.

c. Unconscienable contract

If a contract is unconscienable when made, the court may refuse to enforce it, may enforce the remainder of the contract, or may limit the application of the contract so as to avoid an unconscienable result.<sup>25/</sup> But courts apply a strained construction to a contract rather than declare it unconscienable.<sup>26/</sup>

A contract is unconscienable if the clauses involved are so one-sided as to be unconscienable under the circumstances existing at the time of the making of the contract.<sup>27/</sup> The principle is one of prevention of oppression and unfair surprise and not a disturbance of allocation of risks because of superior bargaining power.<sup>28/</sup>

The Minnesota Supreme Court has held that a clause in an express warranty exculpating the manufacturer of a herbicide from liability for consequential damages was not unconscienable in view of the nature of the product and the facts that a multitude of factors could affect its effectiveness, and that the risks of failure were fairly disclosed at time of purchase.<sup>29/</sup> The Court held that crop losses occuring as a result of the herbicide's failure to control weeds were consequential damages and therefore not recoverable.

Contract farming would appear to have significant potential for unconscienable abuse. There will usually be inequality of bargaining power between the large agribusiness, on one hand, and the individual farmer on the other. If, for example, the date of delivery is stated to be any time within a given month at such date as the processor shall demand, the purchaser-

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<sup>25/</sup> Minn. Stat. § 336.2-302(1) (1976).

<sup>26/</sup> Bekkevold v. Potts, 173 Minn. 87, 266 N.W. 790 (1927).

<sup>27/</sup> Minn. Stat. § 336.2-302, cmt. 1 (1973).

<sup>28/</sup> Id.

<sup>29/</sup> Kleven v. Geigy Agricultural Chemicals, 303 Minn. 320, 227 N.W. 2d 566 (1975); but see Steele v. J. I. Case Co., 197 Kan. 554, 419 P. 2d 902 (1966).

processor will be in a position to watch the market and make demand only on dates favorable to him. Some states have passed legislation dealing with such perceived abuses, but Minnesota has not.<sup>30/</sup> As agribusinesses continue to grow, and increasingly secure input by contract,<sup>31/</sup> there will probably be more legislation of this type in the future.

d. Warranties

(1) Express warranty

Under the UCC, a statement becomes an express warranty when it constitutes part of the basis of the bargain.<sup>32/</sup> "Express" warranties rest on "dickered" aspects of the individual bargain, and go so clearly to the essence of that bargain that words of disclaimer contained in an accompanying form are repugnant to the basic dickered terms.<sup>33/</sup> This provision of the law is limited in its application to warranties made by the seller to the buyer as part of contract for sale.<sup>34/</sup> The purpose of the law of warranty is to determine what it is that the seller has in essence agreed to sell.<sup>35/</sup>

In an action for breach of an express warranty, the damage must have been proximately caused by the breach.<sup>36/</sup> Thus where a feed mill expressly warranted that calves would gain 2 pounds per day by using the feed mill's mixture, the jury must find that the failure to gain such weight was proximately caused by the breach of warranty before the feed purchaser can recover.<sup>37/</sup>

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<sup>30/</sup> See, e.g., Iowa Code Ann. § 172.02 (West).

<sup>31/</sup> Agribusiness cannot get directly involved in farming because of Family Farm Incorporation Legislation. See chapter II, supra.

<sup>32/</sup> Minn. Stat. § 336.2-313 (1976).

<sup>33/</sup> Minn. Stat. § 336.2-313, cmt. 1 (1976).

<sup>34/</sup> Minn. Stat. § 336.2-313, cmt. 2 (1976).

<sup>35/</sup> Minn. Stat. § 336.2-313, cmt. 4 (1976).

<sup>36/</sup> Heil v. Standard Chemical Manufacturing Co., 301 Minn. 315, 223 N.W. 2d 37 (1974) (judge should send special interrogatory, when special verdict is used, to determine whether breach was the proximate cause).

<sup>37/</sup> Id.

Evidence that a manufacturer produced a herbicide at two different plants and one was good and one was not as applied by a farmer, when conditions and amounts were substantially similar, is sufficient to determine a breach of express warranty of fitness and merchantability.<sup>38/</sup> But damage from crop loss and tilling costs resulting from the herbicide's failure were consequential damages which the buyer could not recover because of an excuplation clause.<sup>39/</sup> Exemplary damages cannot be awarded for a seller's misrepresentations absent actual malice on the part of seller's agent.<sup>40/</sup> A breach of warranty claim is subject to the tort defense of assumption of risk.<sup>41/</sup>

(2) Implied warranties

Section 2-314<sup>42/</sup> implies by law a warranty of merchantability. The rationale of this section is that fairness and public policy require that when a merchant dealing in goods of that kind makes a sale, he warrants the quality of the product. For example, a farmer buying herbicide has a right to expect that the herbicide be "fit for the ordinary purposes for which (herbicides) are sold."<sup>43/</sup> If the herbicide is ineffective, the farmer will have a cause of action for breach of an implied warranty of merchantability.

The implied warranty may become significant to the farmer as a seller of goods. The question is whether the farmer is "a merchant with respect to

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38/ Kleven v. Geigy Agricultural Chemicals, 303 Minn. 320, 227 N.W. 2d 566 (1975).

39/ Id.

40/ Easton Farmers Elevator Co. v. Chromalloy Corp., \_\_\_\_\_ Minn. \_\_\_\_\_, 246 N.W. 2d 705 (1976).

41/ Goblirsch v. WesternLand Roller Co., \_\_\_\_\_ Minn. \_\_\_\_\_, 246 N.W. 2d 687 (1976) (feeding wet corn into a machine by hand).

42/ Minn. Stat. § 336.2-314 (1976).

43/ See Minn. Stat. § 336.2-314(2) (1976). Subdivision 2 states five other standards of merchantability including conformance "to the promise or affirmations of fact made on the container or label" and "pass without objection in the trade." Id. The standard for fungible goods is "fair average quality within the description," of middle quality. Id.

goods of that kind."<sup>44/</sup> Essentially, the question is whether the farmer is a "merchant," because if he is a "merchant," it will usually not be difficult to show that he was "a merchant with respect to goods of that kind."<sup>45/</sup> The UCC defines a "merchant" as

a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practice or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill.<sup>46/</sup>

This definition is not conclusive of the question of whether or not the farmer is a merchant and the question has not been decided by the Minnesota Supreme Court.<sup>47/</sup> One writer has suggested that the answer should turn on whether the farmer produces farm products primarily for sale or primarily for personal use.<sup>48/</sup>

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<sup>44/</sup> See Minn. Stat. 336.2-314(1) (1976).

<sup>45/</sup> The question of whether the farmer is a merchant also becomes important under § 2-201 (statute of frauds) and § 2-207 (additional terms in an acceptance. If the farmer is a merchant for § 2-201 purposes, he may be bound to an oral contract which he would otherwise not be bound to. The statute of fraud cases go both ways. See *Loeb and Co. v. Schreiner*, 321 So. 2d 199 (Ala. 1975) (farmer not a merchant); *Cook Grains, Inc. v. Fallis*, 395 S.W. 2d 555 (Ark. 1965) (farmer not a merchant); *contra Sierens v. Clausen*, 60 Ill. 2d 585, 328 N.E. 2d 559 (1975) (farmer not a merchant).

<sup>46/</sup> Minn. Stat. § 336.2-104(1) (1976).

<sup>47/</sup> This issue was not addressed by the court in *Jurek v. Thompson*, \_\_\_\_\_ Minn. \_\_\_\_, 241 N.W. 2d 788 (1976), although it appears that the argument that the farmer is a merchant could have been made by the plaintiff.

<sup>48/</sup> Note, 28 Baylor L. Rev. 715, 721 (1976). See *Billings v. Joseph Harris Co.*, 27 N.C. App. 689, 220 S.E. 2d 361, 367 (1975).

Section 2-315<sup>49/</sup> implies a warranty of fitness for a particular purpose when, at the time of sale, the seller has reason to know the buyer's requirements and the buyer relies on the skill and judgment of the seller to furnish suitable goods. Goods may be merchantable, yet still not fit for a particular purpose.<sup>50/</sup> A seller has reason to know the particular purpose when the buyer purchases goods for a specific use which is peculiar to the nature of his business, and this knowledge may be circumstantially implied<sup>51/</sup>

This warranty is implied even if the seller is not a merchant. Thus, if a neighbor prepares silage and represents it as suitable for dairy cattle, he will have given a warranty if the buyer relies on him.<sup>52/</sup>

Implied warranty is particularly significant in the sale of food. The tendency of courts is to hold the manufacturer of food to a high degree of care because of the serious consequences to human life if he is negligent.<sup>53/</sup> The majority of jurisdictions hold as a matter of law that a meat product with a fragment of its own bone is a breach of an implied warranty of fitness for purpose.<sup>54/</sup> But where a buyer of a sealed product at a self service store selects a jar without advice or assistance from the seller, and the seller is not the manufacturer, there is not implied warranty.<sup>55/</sup>

Implied warranties are excluded by words such as "as is" or "with all faults," when the buyer has a reasonable opportunity to inspect the goods, or

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<sup>49/</sup> Minn. Stat. § 336.2-315 (1976).

<sup>50/</sup> Minn. Stat. § 336.2-315, cmt. 2 (1976).

<sup>51/</sup> See Minn. Stat. § 336.2-315, cmt. 2 (1976).

<sup>52/</sup> Borman v. O-Lonley, 364 S.W. 2d 31 (Mo. 1962).

<sup>53/</sup> Nassit v. Swift & Co., 16 Mass. App. Dec. 201 (1958).

<sup>54/</sup> See DeGraff v. Myers Foods, Inc., 19 Pa. D & C. 2d 19, 8 Bucks 364, 73 York 14 (1959) (Pennsylvania goes the other way).

<sup>55/</sup> Torpey v. Red Owl Stores, 228 F. 2d 117 (8th Cir. 1956) (under Minn. Uniform Sales Act).



by a course of dealing.<sup>56/</sup> Both express and implied warranties extend to any person reasonably expected to use the goods, and a seller may not limit this provision of the law.<sup>57/</sup>

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<sup>56/</sup> Minn. Stat. § 336.2-316 (1976).

<sup>57/</sup> Minn. Stat. § 336.2-318 (1976).

2. Bulk Sales--Article 6

Article 6 attempts to simplify and make uniform the law of bulk sales.<sup>1/</sup>  
The purpose of bulk sales law is to eliminate two common types of commercial fraud: (1) the merchant who sells his stock to a friend for less than it is worth, pays his creditors less than he owes them, and hopes to come back into the business through the back door, and (2) the merchant who sells out his stock, pockets the proceeds, and disappears, leaving his creditors unpaid.<sup>2/</sup>

Farming is not included among the enterprises covered in Article 6.<sup>3/</sup>  
Previous cases which had held that farmers were within the provisions of bulk transfer laws are superceded. The rationale for excluding farming from Article 6 is that there is considerably less liklihood of fraud of the type the Article is designed to prevent than there is with enterprises selling merchandise from stock.

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<sup>1/</sup> Minn. Stat. § 336.6-101, cmt 1 (1976).

<sup>2/</sup> Minn. Stat. § 336.6-101, cmt 2 (1976).

<sup>3/</sup> Minn. Stat. § 336.6-102(3) & cmt 2 (1976).

### 3. Documents of Title

Public warehousing is very important in agriculture, primarily because production is seasonal and consumption is not. Warehousing was addressed in some detail under harvested crops in Chapter I, supra. This section deals exclusively with documents of title issued by such warehouses.

Title documents are important because they are bought and sold as symbols of the goods and because they serve as a basis for credit. Article 7 of the UCC is a consolidation of the laws relating to negotiation of documents of title, except that it does not encompass provisions of negotiable document law that impose criminal penalties.<sup>1/</sup> Packing house certificates are not covered by Article 7, but are addressed in the following material. The obligations of Article 7 on the issuer of a warehouse receipt, bill of lading, etc. apply even if the document does not comply with the requirements of the Article and even if the person issuing the document does not come within the definition of a warehouseman.<sup>2/</sup>

A warehouse receipt is a receipt issued by a person engaged in the business of storing goods for hire.<sup>3/</sup> It imports that the goods are in the hands of a representation of the property itself.<sup>5/</sup> A bill of lading is a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods.<sup>6/</sup> A packing house certificate is issued by a person engaged in the slaughter of animals for commodities he actually has in store.<sup>7/</sup>

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<sup>1/</sup> See Minn. Stat. §§ 227.50-.55, 228.45-51 (1976).

<sup>2/</sup> Minn. Stat. § 336.7-401 (1976); See Minn. Stat. § 336.7-102 (1976).

<sup>3/</sup> Minn. Stat. § 336.1-201(45) (1976).

<sup>4/</sup> Union Trust Co. v. Wilson, 198 U.S. 530, 25 S. Ct. 766, 49 L. Ed. 1154 (1905).

<sup>5/</sup> Gibson v. Stevens, 49 U.S. 384, 12 L. Ed. 1123 (1850).

<sup>6/</sup> Minn. Stat. § 336.1-201(6) (1976).

<sup>7/</sup> See Minn. Stat. § 226.01 (1976).

A warehouse receipt, bill of lading, or other document of title covered by Article 7 is negotiable if by its terms the goods are to be delivered to bearer or to the order of a named person (where recognized overseas, if it runs to a named person or assigns).<sup>8/</sup> In general terms, the document is negotiable if the goods the documents represents can be claimed by the holder of the receipt, or by a specifically named person. Any other document of title is non-negotiable.<sup>9/</sup>

a. Warehouse receipts and bills of lading

A warehouse receipt may be issued by any warehouseman.<sup>10/</sup> A warehouseman is a person engaged in the business of storing goods for hire.<sup>11/</sup> When agricultural commodities are stored under a statute requiring a bond against withdrawal, or a license for the issuance of a receipt, a receipt issued for the goods has the same effect as a warehouse receipt even if it is issued by a person who is the owner of the goods and is not a warehouseman.<sup>12/</sup> This does not change the rule that a warehouseman, storing his own goods,<sup>13/</sup>

A warehouse receipt need not be in any particular form, but it must contain certain terms.<sup>14/</sup> These terms include such things as location of the warehouse, a description of the goods, the rate of storage and handling charge, etc.<sup>15/</sup>

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<sup>8/</sup> Minn. Stat. § 336.7-104 (1976).

<sup>9/</sup> Id.

<sup>10/</sup> Minn. Stat. § 336.7-201 (1976).

<sup>11/</sup> Minn. Stat. § 336.7-102(h) (1976).

<sup>12/</sup> Minn. Stat. § 336.7-201 (1976).

<sup>13/</sup> Minn. Stat. § 336.7-201, Minn. cmt. (1976); see, e.g., Swedish-American Nat. Bank. v. First National Bank, 89 Minn. 98, 94 N.W. 218 (1903).

<sup>14/</sup> Minn. Stat. § 336.7-202 (1976).

<sup>15/</sup> Id.

The issuer of a warehouse receipt or bill of lading becomes a bailee, and if he fails to perform his duties, he incurs certain liabilities. He may become liable to a "purchaser for value in good faith of" a warehouse receipt for misdescription or non-receipt.<sup>16/</sup> The warehouseman or carrier is liable for damages for loss or injury to goods caused by his failure to exercise such care in regard to them as a "reasonably careful man would exercise under like circumstances."<sup>17/</sup>

The bailee is under a duty to deliver to a person entitled under the document unless he establishes the presence of one of the seven types of defenses provided by the Code.<sup>18/</sup> The Code does not expressly impose a sanction for a violation of this duty, but the document holder can probably either reclaim the goods or recover their value.<sup>19/</sup>

When a duplicate receipt is issued or there is an overissue of a document purporting to cover goods which are already covered by the receipt, the duplicate or overissued document does not confer any rights in the goods.<sup>20/</sup> There is an exception when the overissue of receipts is for storage of fungible goods,<sup>21/</sup> e.g., stored grain, or when the additional receipt is a substitute for a lost, stolen or destroyed receipt.<sup>22/</sup> The warehouse receipt

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<sup>16/</sup> Minn. Stat. § 336.7-203 (1976). The bill of lading equivalent is § 7-301.

<sup>17/</sup> Minn. Stat. §§ 336.7-204, -309 (1976). The UCC does not allow obligations of reasonable care to be disclaimed by agreement. See Minn. Stat. § 336.1-102(3) (1976).

<sup>18/</sup> Minn. Stat. § 336.7-403 (1976). These defenses include such things as the right to stop delivery under § 2-705, delivery to a person whose receipt was rightful, etc. Id.

<sup>19/</sup> See Minn. Stat. §§ 336.1-103, -106(2), 7-403 (1976).

<sup>20/</sup> Minn. Stat. § 336.7-402 (1976).

<sup>21/</sup> Minn. Stat. § 336.7-207 (1976).

<sup>22/</sup> Minn. Stat. § 336.7-601 (1976).

issuer is liable for damages caused by his overissue or his failure to identify (mark) as a duplicate a reissued document.<sup>23/</sup>

Article 7 provides the warehouseman and the carrier with certain liens. The warehouseman has a lien on goods covered by a warehouse receipt or on their proceeds for charges in relation to the goods.<sup>25/</sup> The warehouseman's lien can become a general lien covering storage charges on other goods if it is stated that "a lien is claimed for charges and expenses in relation to other goods."<sup>26/</sup> A warehouseman is permitted to reserve a security interest for charges other than those already discussed, such as for money advanced and interest.<sup>27/</sup> The carrier is not able to expand his lien into a general lien, and is not allowed to reserve a security interest.

The warehouseman or bailee can withhold possession until his lien is satisfied.<sup>28/</sup> This right is lost if the bailee voluntarily delivers the goods, or unjustifiably refuses to deliver.<sup>29/</sup>

A purchaser of a negotiable document of title, other than the bailee, is entitled to the full protection provided by Article 7 only if he takes by due negotiation. This requires: (1) negotiation, (2) good faith, (3) without notice, (4) value, (5) regular course, and (6) a transaction other than settlement or payment of a money obligation.<sup>30/</sup> The full protection of

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<sup>23/</sup> Minn. Stat. § 336.7-402, cmt. 1 (1976).

<sup>24/</sup> Minn. Stat. § 336.7-209(1) (1976).

<sup>25/</sup> Minn. Stat. § 336.7-307 (1976).

<sup>26/</sup> Minn. Stat. § 336.7-209(1) (1976).

<sup>27/</sup> Minn. Stat. § 336.7-209(2) (1976).

<sup>28/</sup> Minn. Stat. § 336.7-209, cmt. 4 (1976).

<sup>29/</sup> Minn. Stat. § 336.7-209(4) (1976).

<sup>30/</sup> Minn. Stat. § 336.7-501(4) (1976); see Minn. Stat. §§ 336.1-201(20), 7-403(4) (negotiation); 1-201(19), 7-404 (good faith); 1-201(44) (value); 7-501, cmt. 1 (regular course) (1976).

Article 7 means the bona fide purchaser by due negotiation takes free of prior equities and of prior legal interest--a thief can confer good title by negotiating a stolen document.<sup>31/</sup> Subject to stated exceptions, the holder's protection includes title to the document, title to the goods, all rights accruing under the law of agency or estoppel, and the direct obligation of the bailee.<sup>32/</sup>

There are situations in which the purchaser's rights may be defeated despite negotiation.<sup>33/</sup> These are unauthorized bialment, fungible goods, unaccepted delivery orders, delivery orders in conflict with rights under other negotiable documents, and bills of lading issued by and to freight forwarders.<sup>34/</sup> If the document is not duly negotiated, the transferee still acquires title and rights which his transferor had or had actual authority to convey.<sup>35/</sup>

Indorsing a document of title is not a contractual act, it merely conveys a property interest. Thus the indorser is not liable for any default by the bailee or by previous indorsers.<sup>36/</sup>

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<sup>31/</sup> R. Braucher, Documents of Title, at 61 (ALI/ABA 1958).

<sup>32/</sup> Id.

<sup>33/</sup> See Minn. Stat. §§ 336.7-502, -503 (1976).

<sup>34/</sup> Id.

<sup>35/</sup> Minn. Stat. § 336.7-504 (1976). This section also governs non-negotiable documents.

<sup>36/</sup> Minn. Stat. § 336.7-505 (1976).

b. Packing House Certificates

Any person engaged in the slaughter of cattle, shepp or hogs and dealing in the products thereof, who owns or controls a building wherein such business is conducted or such commodities are stored may issue warehouse certificates for any commodity actually in store.<sup>37/</sup> These may be sold, assigned, transferred, pledged or encumbered.<sup>38/</sup> Each certificate must contain the name and address of the person issuing, the location of the warehouse, the date of issue, the quantity of each commodity, its mark of identification (if any), and it must be signed by the issuer.<sup>39/</sup>

Before issuing a certificate, the issuer must file a written declaration with the Register of Deeds.<sup>40/</sup> Each certificate must have a statement on the back that the party issuing has complied with the law, and given information on the filing.<sup>41/</sup> The certificate holder has title to the commodities.<sup>42/</sup>

The property must be actually in the warehouse and remain there until otherwise ordered by the certificate holder.<sup>43/</sup> No second certificate can be issued, and the property cannot be sold, encumbered, shipped, or transferred without the written consent of the certificate holder.<sup>44/</sup>

It is a felony to wilfully alter, destroy, issue without registering, knowingly issue when commodities are not in store, issue a second certificate, or sell to encumber a commodity without the written consent of the certificate holder.<sup>45/</sup>

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<sup>37/</sup> Minn. Stat. § 226.01 (1976).

<sup>38/</sup> Id.

<sup>39/</sup> Id.

<sup>40/</sup> Minn. Stat. § 226.02 (1976).

<sup>41/</sup> Minn. Stat. § 336.03 (1976).

<sup>42/</sup> Id.

<sup>43/</sup> Minn. Stat. § 226.04 (1976).

<sup>44/</sup> Id.

<sup>45/</sup> Minn. Stat. § 226.05 (1976).



D. Insurance

This outline will not attempt to cover all significant aspects of insurance law because most insurance law is the same when applied to the agricultural sector of society as it is when applied to any other sector. For example, farm liability insurance is not significantly different from homeowner's liability or small business liability insurance. The following paragraphs address some of the Minnesota insurance statutes of significance to agriculture.

Every hail insurance policy issued in the State of Minnesota must provide that in case of loss, and the failure of the parties to agree as to the amount of such loss, that the amount will be determined by three disinterested parties.<sup>1/</sup> One of these persons is selected by the insured, one by the insurer, and the third by the first two.<sup>2/</sup> The award of these disinterested persons is final and conclusive, and unless waived by the parties, is a condition precedent to a right of action to recover such loss.<sup>3/</sup> No suit on a hail insurance policy can be maintained unless it is commenced within one year after the loss occurred.<sup>4/</sup>

It is lawful for 25 or more persons collectively owning property in excess of \$50,000 to form a corporation for mutual insurance against loss or damage by certain limited perils.<sup>5/</sup> Such companies are called Township

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<sup>1/</sup> Minn. Stat. § 65A.26 (1976).

<sup>2/</sup> Id.

<sup>3/</sup> Id.

<sup>4/</sup> Id.

<sup>5/</sup> Minn. Stat. § 67A.01 (1976); see Minn. Stat. § 67A.13 (1976).

Mutual Companies and are regulated by Chapter 67A of the Minnesota Statutes. The perils against which such companies may insure include most natural disasters and, as to livestock, "against loss or damage by electrocution by electric currents artificially generated, attack by dogs or wild animals, drowning, accidental shooting, loading or unloading, or collision or overturn of conveyances...." <sup>6/</sup> The kinds of property which township mutuals may insure include farm buildings and farm personal property. <sup>7/</sup> A township mutual cannot insure a single risk for more than the greater of \$3,000 or one-tenth of its net assets plus two-tenths of a mill of its insurance in force. <sup>8/</sup>

In addition, there is one existing Farmers Mutual Fire Insurance Company in the State of Minnesota. <sup>9/</sup> No such companies can now be formed. <sup>10/</sup> It may insure against the same types of perils as the Township Mutual. <sup>11/</sup> Insurable property includes, among other things, dwellings and the contents, livestock, farm machinery, automobiles, threshing machines, farm produce anywhere on the premises, country blacksmith shops, country locker plants, creameries and cheese factories. <sup>12/</sup>

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<sup>6/</sup> Minn. Stat. § 67A.13 (1976). The company has no authority to insure standing grain against hail loss. See *Delaware Farm Mut. Fire Ins. Co. v. Wagner*, 57 N.W. 656, 56 Minn. 240 (1894). But it may insure chickens (livestock) against fire. Op. Atty. Gen., 146-F, May 10, 1926.

<sup>7/</sup> Minn. Stat. § 67A.14(1) (1976).

<sup>8/</sup> Minn. Stat. § 67A.14(7) (1976).

<sup>9/</sup> This company was formed in 1895, and is regulated by Minn. Stat. §§ 67A.27-.39 (1976).

<sup>10/</sup> Minn. Stat. § 67A.27 (1976).

<sup>11/</sup> See Minn. Stat. § 67A.28 (1976). The Farmers Mutual may insure livestock against the same perils as the Township Mutual, but may, in addition, insure such animals against "collapse of buildings or straw or hay stacks...." *Id.*

<sup>12/</sup> Minn. Stat. § 67A.31 (1976). They may also insure county poor farms. *Id.* subd. (3).

#### IV. TAXATION

This chapter addresses taxation; primarily income and property taxation, but also other types of taxation. As with the rest of this outline, the focus is on Minnesota law with only occasional references to federal law. No attempt is made to outline tax law in general. Only those provisions of significance to agriculture are addressed.

A. Income Tax

This section discusses Minnesota income tax law relating specifically to agriculture. <sup>1/</sup> The topics addressed are gross income, exemptions, deductions, and credits. The exempt agricultural electricity credit is discussed in this section, even though it is literally an exemption to the state's sales tax, because the credit is claimed against income taxes payable.

It should also be noted that the farm employer is probably subject to the employers' excise tax of two mills on each dollar of taxable compensation paid. <sup>2/</sup>

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<sup>1/</sup> Farm income is assigned (payable) to the State of Minnesota if the farm is located within the state. Minn. Stat. § 290.17 (1976).

<sup>2/</sup> See Minn. Stat. § 290.1031 (1976).

1. Gross income.

Minnesota law defines gross income for individuals as adjusted gross income as computed for federal income tax purposes for the applicable tax year with certain modifications thereafter listed. <sup>1/</sup> Federal law defines gross income as "all income from whatever source derived." <sup>2/</sup> An interpretation of this inherently ambiguous definition requires some understanding of its background and a review of the Supreme Court decisions interpreting it. Such is beyond the scope of this outline.

Once the federal adjusted gross income is determined, there are only a few modifications that can be made that are directly related to farming. Section 290.09(29) sets forth the deductions attributable to farming which may be subtracted or deducted from gross income. Expenses and losses arising from a farm which are not allowable under § 290.09(29) are added to federal adjusted gross income in computing Minnesota gross income. <sup>3/</sup> The interest earned by the seller of property on a family farm security loan executed after December 31, 1978, and before January 1, 1982, may also be deducted from federal adjusted gross income. <sup>4a/</sup> The other modifications increasing or reducing federal adjusted gross income do not relate specifically to agriculture, but nevertheless should be examined in each case to determine whether they may be applicable. <sup>4b/</sup>

Gross income as applied to corporations--some farming operations are, of course, incorporated--includes every kind of compensation for labor or personal services of every kind from any private or public employment, office, position, or services; income derived from the ownership or use of property; gains or

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<sup>1/</sup> Minn. Stat. § 290.01(20)(1976), as amended by Act of April 5, 1978, Ch. 763, § 2, 1978 Minn. Sess. Law Serv. (West).

<sup>2/</sup> I.R.C. § 61. One aspect of federal adjusted gross income is constructive receipt. See Rev. Ruling 58-162 (selling grain under contract calling for payment in following year); Rev. Ruling 72-465 (different deferral rule for livestock); Patterson v. C.I.R., 510 F.2d 48 (9th Cir. 1975) (sale of potatoes and unfettered right to proceeds); Woodbury v. C.I.R., 49 T.C. 180 (1976) (sale of cattle and constructive receipt).

<sup>3/</sup> Act of April 5, 1978, Ch. 763, § 2, 1978 Minn. Sess. Law Serv. (West), to be codified as Minn. Stat. § 290.01(20)(a)(9).

<sup>4a/</sup> Act of April 5, 1978, Ch. 763, § 2, 1978 Minn. Sess. Law Serv. (West), to be codified as Minn. Stat. § 290.01(20)(b)(9). See also, Act of April 5, 1978, Ch. 763, § 3, 1978, Minn. Sess. Law Serv. (West), to be codified as Minn. Stat. § 290.08(24).

5/ Note that the amount distributed by cooperative buying, selling or producing associations (however organized) as patronage dividends is not to be included in the gross income of such associations. Minn. Stat. § 290.08(12)(1976).

profits derived from every kind of disposition of, or every kind of dealing in, property; income derived from the transaction of any trade or business; and income derived from any source. <sup>5/</sup>

## 2. Exemptions.

Certain individuals and organizations are exempt from paying Minnesota income tax. <sup>6/</sup> Some of these organizations are:

1. Farmers' mutual insurance companies organized and existing under the laws of the State (see Chapter III, supra);
2. Agricultural and horticultural organizations, no part of the net income of which inures to the benefit of any private member, stockholder or individual;
3. With certain qualifications, farmers', fruit growers' or like associations organized and operated on a cooperative basis; and,
4. Corporations organized by an association exempt in (3), for the purpose of financing ordinary crop operations.

## 3. Deductions.

The income tax imposed by § 290.06 is imposed on taxable "net income." Net income is gross income less allowable deductions. Anything "deducted" in arriving at gross income cannot again be deducted at this stage.

Many of the general deductions in § 290.09 will be significant to the farm taxpayer. Some of these re: (i) trade or business expenses and expenses for production of income, (ii) interest accrued during the taxable year on

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<sup>5/</sup> Minn. Stat. § 290.01(20) (1976).

<sup>6/</sup> See Minn. Stat. § 290.05 (1976).

indebtedness, and (iii) losses sustained during the taxable year and not compensated for by insurance or otherwise.

A person who constructs a grain-storage facility may elect, in lieu of allowable depreciation, to amortize the adjusted basis of such facility based on a period of 60 months. <sup>7/</sup> A grain-storage facility means any corn crib, grain bin, grain elevator or similar structure intended for storage of grain produced by the storer. <sup>8/</sup>

Expense incurred for soil and water conservation of land used in farming may be treated as expenses which are not chargeable to capital account. <sup>9/</sup> Expenditures so treated are allowed as a deduction, but the amount deductible in any single year cannot exceed 25 percent of the gross income derived from farming during the year. <sup>10/</sup> Any excess can be deducted in succeeding taxable years up to 25 percent of the gross income derived from farming during the taxable year. <sup>11/</sup> To be deductible, the expenditures must be for the moving of earth, the construction or protection of watercourses, the eradication of brush, or the planting of windbreaks. <sup>12/</sup> As was noted earlier, a separate subdivision of Chapter 290 defines deductions attributable to farming. <sup>13/</sup> Incomes and gains and expenses and losses are considered as "arising from a farm" if such items are received or incurred in connection with cultivating

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<sup>7/</sup> Minn. Stat. § 290.09(20) (1976). The amortized deduction is equal to the adjusted basis of such facility at the end of each month divided by the number of months remaining in the period. Id. subd. (a)(3). The taxpayer may at any time discontinue amortization, and begin to depreciate the facility per § 290.09(7). Id. subd. (c).

<sup>8/</sup> Minn. Stat. § 290.09(20)(d)(1) (1976).

<sup>9/</sup> Minn. Stat. § 290.09(21) (1976).

<sup>10/</sup> Id.

<sup>11/</sup> Id.

<sup>12/</sup> Id.

<sup>13/</sup> Minn. Stat. § 290.09(29) (1976), as amended by Act of June 2, 1977, ch. 376, § 5, Minn. Sess. Law Serv. (West).



the soil, or raising or harvesting any agricultural or horticultural commodity, including the raising, shearing- feeding, caring for training and management of livestock, bees, poultry, and fur-bearing animals and wildlife, and all operations incident thereto (including "hedging"). <sup>14/</sup>

Expenses and losses arising from a farm are allowed as a deduction up to the amount of the income and gains arising from a farm in any taxable year, plus the first \$15,000 of nonfarm gross income (or nonfarm taxable net income in the case of a corporation). <sup>15/</sup> However, where nonfarm income exceeds \$15,000, this amount is reduced by twice the amount by which the nonfarm income exceeds \$15,000. <sup>16/</sup> Except as provided by § 290.09(29), expenses and losses, except for interest and taxes, arising from a farm shall not be allowed as deductions in excess of income and gains arising from a farm. <sup>17/</sup>

#### 4. Feedlot pollution control equipment credit.

Before computing the tax due by a particular taxpayer, credits may be deducted from taxable net income. In other cases, credits may be subtracted from the tax due. In addition to other credits available (personal exemptions, dependents, income-adjusted homestead, etc.), a feedlot operator may also be eligible for a credit of 10 percent of the net cost of pollution control

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<sup>14/</sup> Minn. Stat. § 290.09(29)(a) (1976), as amended. Hedging, very generally, is buying or selling commodity futures as a protection against price change.

<sup>15/</sup> Minn. Stat. § 290.09(29)(c) (1976), as amended.

<sup>16/</sup> Id. The remaining balance can generally be carried forward and backward, but that year's deductions must be utilized first. Id. The period of limitations for refund claims under §§ 290.46, .50 relating to an over-payment attributable to a farm loss limitation carryback is that period which ends with the expirations of the 15th day of the 45th month (46th month in case of corporations) following the end of the taxable year of the farm loss which results in the carryback (this is in lieu of the period prescribed by §§ 290.46, 150). Minn. Stat. § 290.09(29)(e) (1976) as amended.

<sup>17/</sup> Minn. Stat. § 290.09(29)(b) (1976), as amended.

equipment he installs. <sup>18/</sup> This credit is deducted from the income tax due in the year in which such equipment is purchased. <sup>19/</sup> The types of equipment and devices referred to by the statute are lagoons, concrete storage pits, slurry handling equipment, and other devices approved by the Pollution Control Agency, but the credit is not limited to these particular items. <sup>20/</sup> The equipment or device must be purchased, installed and operated within Minnesota by a feedlot operator to prevent pollution of air, land or water in connection with the operation of a livestock feedlot, poultry lot or other animal lot. <sup>21/</sup> If the amount of this credit exceeds the taxpayer's liability, the excess amount may be carried forward four years. <sup>22/</sup>

5. Exempt agricultural electricity credit.

Any consumer who has paid Minnesota sales tax to an electrical retailer on purchases of electricity used or consumed in agricultural production may file a claim for credit or refund of such tax if the retailer has not previously filed a claim for such credit or refund of the sales tax paid on such purchases. <sup>23/</sup> The consumer must obtain a certificate from the electrical retailer and fill out schedule EAC.

Examples of electricity which is used or consumed in agricultural production are: stock watering heater, silo unloader, bank feeder, (silo to cattle), water pump (cattle or irrigation), chicken house lights, milking

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<sup>18/</sup> See Minn. Stat. § 290.09(9a), as amended by act of May 25, 1977, ch. 250, § 1, 1977 Minn. Sess. Law Serv. (West). This credit is currently scheduled to terminate on December 31, 1980. Id.

<sup>19/</sup> Id.

<sup>20/</sup> Id.

<sup>21/</sup> Id.

<sup>22/</sup> Id.

<sup>23/</sup> Minn. Stat. § 297A.25(1)(h) (1976) exempts, among other things, electricity used in agricultural production from sales tax.

machines, milk separators, crop dryers, sump pump in field (drainage for planting), heat for brooder and heat lamp for hogs. 24/ None of the electricity used in the office, work shop or for space lighting of yard and barn is considered as being used in agricultural production. Further examples of electricity which is not used or consumed in agricultural production are: Barn ventilator fan, cow trainer, lights (barn, milkhouse, yard storage, or preservation of agricultural products, milk coolers), bulk tanks, heating water for cleaning milking machines; electrical appliances in the home; and welders, power tools, etc. in the shop. 25/

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24/ See back of Schedule EAC.  
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## B. Property Tax

This section of the outline addresses the provisions of Minnesota property tax law which relate to agriculture. The topics discussed include exempt property, valuation and classification, the Minnesota Agricultural Property Tax Law, and property of nonresidents.

### 1. Exempt Property

Unless exempt, all real and personal property in the state, and all personal property of persons residing within the state, is subject to property tax. <sup>1/</sup> Property exempt from such taxation includes:

1. All natural cheese held in storage for aging by the original Minnesota manufacturer; <sup>2/</sup>
2. Farm machinery manufactured prior to 1930, which is used only for display purposes as a collectors item; <sup>3/</sup>
3. All agricultural products; <sup>4/</sup>
4. All livestock and poultry, and all horses, mules, and other animals used exclusively for agricultural purposes; <sup>5/</sup>
5. All agricultural tools, implements and machinery used in agricultural pursuits. <sup>6/</sup>

The original packages of certain products stored in a commercial storage warehouse are exempt from taxation. <sup>7/</sup> This includes dairy, poultry, vegetable and meat products (excluding grain) produced and processed in

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<sup>1/</sup> Minn. Stat. § 272.01 (1976).

<sup>2/</sup> Minn. Stat. § 272.02(8) (1976).

<sup>3/</sup> Minn. Stat. § 272.02(10) (1976).

<sup>4/</sup> Minn. Stat. § 272.02(11) (1976).

<sup>5/</sup> Minn. Stat. § 272.02(13) (1976).

<sup>6/</sup> Minn. Stat. § 272.02(14) (1976), see Minn. Const., art. 10, § 1. Portable tools and machinery used by an elevator company in connection with production and sale of turkey feed are exempt. Farm Service Elevator Co. v. Kandiyohi County, 301 Minn. 96, 221 N.W.2d 713 (1974).

<sup>7/</sup> See Minn. Stat. § 272.023 (1976).

this state and consigned for shipment out of state to a person other than the owner, and placed in storage in the original packages in a commercial storage warehouse licensed and regulated by the State of Minnesota. <sup>8/</sup>

While in storage, it is considered in transit and not subject to taxation. <sup>9/</sup>

## 2. Classification, Valuation

### (a) Real property defined

For purposes of proerty taxation, real property includes land and all buildings, structures or improvements or other fixtures on it, and all rights or privileges appertaining to it. <sup>10/</sup> The term does not include tools, implements, machinery and equipment attached to or installed in real property for use in the production activity conducted thereon regardless of size, weight, or method of attachment. <sup>11/</sup>

Thus a building erected by a lessee on railroad land was assessable as personal property to the lessee and should not be included in real estate assessment of the land. <sup>12/</sup> But a reserved easement in gross over state land (which is tax exempt) creates an interest in the grantor which is an interest in real property, and which, if substantial, should be valued and assessed separately. <sup>13/</sup> Riparian rights, until separated from the abutting shore property, are not subject to an independent tax. <sup>14/</sup>

### (b) Classification of property

All real and personal property subject to the general property tax, and not subject to any gross earnings or lieu tax, is classified for purposes of taxation. <sup>15/</sup>

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<sup>8/</sup> Minn. Stat. § 272.023 (1976).

<sup>9/</sup> Id. The exemption does not apply if any portion of the warehouse is owned or leased by the owner, consignee or consignor of the personal property. Id.

<sup>10/</sup> Minn. Stat. § 272.03 (1976). Whether property is real or personal is significant for valuation, assessment and other reasons.

<sup>11/</sup> Minn. Stat. § 272.03(1)(c)(i) (1976).

<sup>12/</sup> Op. Atty. Gen., 216-I, May 10, 1949.

<sup>13/</sup> Op. Atty. Gen., 474-J-1, March 30, 1962.

<sup>14/</sup> In re Delinquent Taxes, 81 Minn. 422, 84 N.W. 302 (1900).

<sup>15/</sup> See Minn. Stat. § 273.13 (1976).

(1) Class 3 property

All agricultural land not classified as Class 1 (iron ore), 3b (infra), or 3e (timber) is classified as Class 3. <sup>16/</sup> Class 3 property is valued and assessed at 33 1/3 percent of its market value. <sup>17/</sup> Special provision is made for taxes assessed in 1977 and 1978 on agricultural land and real property devoted to temporary seasonal residential occupancy for recreational purposes. <sup>18/</sup>

(2) Class 3b property

Agricultural land, except as provided in Class 1 (iron ore), which is used for the purposes of a homestead is classified as 3b. <sup>19/</sup> In 1977 it is valued and assessed at 18 percent of its market value and thereafter at 16 percent. <sup>20/</sup> The property tax paid on 3b property <sup>21/</sup> is reduced by 45 percent of the tax if such reduction does not exceed \$325. <sup>22/</sup> Valuations are subject to relief in 1977 are limited to 120 acres of land, most contiguous surrounding, or bordering the house occupied by the owner as his dwelling place; in 1978 and subsequent years, relief is limited to 160 acres. <sup>23/</sup> When market value (see note 17, supra) exceeds the homestead base value, <sup>24/</sup> the amount in excess is valued at 31 percent of its market value for 1977, and 30 percent thereafter. <sup>25/</sup>

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<sup>16/</sup> Minn. Stat. § 273.13(4) (1976), as amended by 1977 Omnibus Tax Provisions, ch. 423, Art. III, § 5, 1977 Minn. Sess. Law Serv. (West).

<sup>17/</sup> Id. "Market value" means usual selling price at the place where the property is located at the time of assessment (private sale, not forced nor auction). Minn. Stat. § 272.03(8) (1976).

<sup>18/</sup> Minn. Stat. § 273.13(4) (1976). Thirty-one percent for 1977, 30 percent for 1978.

<sup>19/</sup> Minn. Stat. § 273.13(6) (1976), as amended by 1977 Omnibus Tax Provisions, ch. 423, Art. III, § 6, 1977 Minn. Sess. Law Serv. (West).

<sup>20/</sup> Id.

<sup>21/</sup> Not exceeding 120 acres less any reduction received under § 273.135, homestead property tax relief, supra.

<sup>22/</sup> Minn. Stat. § 273.13(6) (1976), as amended.

<sup>23/</sup> Id.

<sup>24/</sup> Homestead base value was \$12,000 in 1975, but it is increased annually by the homestead base value index. See Minn. Stat. § 273.122 (1976).

<sup>25/</sup> Minn. Stat. § 273.13(6) (1976), as amended.

"Agricultural land," as used here and in § 273.132 (state paid agricultural credit, infra), means contiguous acreage of 10 acres or more, primarily used during the preceding year for agricultural purposes. 26/ (Agricultural use may include pasture, timber, waste, unusable wild land and land included in federal farm programs.) 27/ Real estate of less than 10 acres used principally for raising poultry, livestock, fruit, vegetables or other agricultural products is agricultural land if it is not used primarily for residential purposes. 28/

Each family farm corporation and each partnership operating a family farm 29/ is entitled to 3b assessment, and to the credit as outlined above, for one homestead occupied by a shareholder or partner who is residing on the land and actively engaged in farming of the land owned by the corporation or partnership. 30/ Such a homestead cannot exceed 120 acres. 31/ Any other residences owned by such a corporation or partnership which are located on agricultural land and occupied as homesteads by shareholders or partners actively engaged in farming can also be assessed as 3b property, and entitled to the 45 percent credit, but the entitlement is limited to one acre, and does not include any other structures located thereon. 32/

(3) Class 3c, 3cc property

All homesteads not classified as 3b are classified 3c and are valued and assessed at 22 percent of market value for 1977, 20 percent thereafter. 33/

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26/ Id.

27/ Id.

28/ Id.

29/ Family farm corporation and family farm are defined by Minn. Stat. § 500.24 (1976).

30/ Minn. Stat. § 273.13(6a) (1976).

31/ Id. This section was not amended in 1977, so the limit has not been expanded to 160 acres.

32/ Minn. Stat. § 273.13(6a)(b) (1976).

33/ Minn. Stat. § 273.13(7) (1976), as amended by 1977 Omnibus Tax Provisions, ch. 343, Art. III, § 7, 1977 Minn. Sess. Law Serv. (West).

The property tax paid, less any reduction under § 273.135, infra, is reduced by 45 percent of the amount of such tax, but such reduction cannot exceed \$325. <sup>34/</sup> If the market value is in excess of the homestead base value (see note 24), the amount in excess of that sum shall be valued and assessed at 36 percent of market value in 1977 and 33 1/3 percent thereafter. <sup>35/</sup>

Class 3cc property includes the homestead of a blind person, a disabled veteran, and certain other persons permanently and totally disabled. <sup>36/</sup> It is valued and assessed at 5 percent of its market value. <sup>37/</sup>

(c) Homestead property tax relief

Property tax on 3b, 3c and 3cc property may be reduced in different amounts and subject to certain limitations by a provision entitled homestead property tax relief. <sup>38/</sup> If within a covered area, the homestead tax may be reduced from 57 to 66 percent with a maximum of either \$385 or \$330. (These maximum amounts are increased \$15 per year starting in 1978.) <sup>39/</sup>

(d) State paid agricultural credit

The county auditor shall reduce the tax on property receiving the homestead credit <sup>40/</sup> by an amount equal to the tax levy that would be produced by applying a rate of 15 mills on the property. <sup>41/</sup> The county auditor

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<sup>34/</sup> Id.

<sup>35/</sup> Id.

<sup>36/</sup> Id.

<sup>37/</sup> Id.

<sup>38/</sup> Minn. Stat. § 273.135 (1976), as amended by 1977 Omnibus Tax Provisions, ch. 423, Art. X, §§ 3, 4, 1977 Minn. Sess. Law Serv. (West).

<sup>39/</sup> Id.

<sup>40/</sup> Minn. Stat. § 273.13(6) (1976), see, e.g., note 22.

<sup>41/</sup> Minn. Stat. § 273.132 (1976) as amended by 1977 Omnibus Tax Provisions, ch. 423, Art. III, § 9, 1977 Minn. Sess. Law Serv. (West).

This section of the Minnesota statutes is also amended by ch. 447, Art. I, § 18, 1977 Minn. Sess. Law Serv. (West), and there the rate of reduction is 12 mills. It is probable the pursuant to Minn. Stat. § 645.33 (1976), the 15 mill rate will be the law.



shall reduce the tax on all other agricultural land and all real estate devoted to temporary and seasonal residential occupancy for recreational purposes, but not devoted to commercial purposes, by an amount produced by applying a rate of 10 mills on the property. <sup>42/</sup> The amounts so computed by the county auditor are submitted to the Commissioner of Revenue where they will be reviewed, and necessary changes will be made. <sup>43/</sup> Payment shall be made pursuant to § 124.212(7b) and § 124.11 to replace revenue lost as a result of the reduction in property taxes. <sup>44/</sup>

### 3. Minnesota Agricultural Property Tax Law

The purpose of the Minnesota Agricultural Property Tax Law <sup>45/</sup> is to equalize tax burdens upon agricultural land within the state. This law, often referred to as the "Green Acres Statute," has been held by the Minnesota Supreme Court to be constitutional. <sup>46/</sup>

Under the Green Acres Statute, real estate of 10 acres or more is entitled to special valuation only if it is actively and exclusively devoted to agricultural use <sup>47/</sup> and either

1. is the homestead of a surviving spouse, child or sibling of the owner or is farmed with the real estate which contains the homestead property, or

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<sup>42/</sup> Minn. Stat. § 273.132 (1976), as amended.

<sup>43/</sup> Id.

<sup>44/</sup> Minn. Stat. § 273.132 (1976) as amended by ch. 447, Art. 1, § 18, 1977 Minn. Sess. Law Serv. (West); see note 41. §§ 124.212 and .11 deal with foundation aid and date of aid payment for education.

<sup>45/</sup> Minn. Stat. § 273.111 (1976).

<sup>46/</sup> Elwell v. Hennepin County, 301 Minn. 63, 221 N.W.2d 538 (1974); see Farm Service Elevator Co. v. Kandiyohi County, 301 Minn. 96, 221 N.W.2d 713 (1974).

<sup>47/</sup> Real property is considered to be in agricultural use if annually: (1) at least 33 1/3 percent of the total family income is derived therefrom, or the total production income including rental from the property is \$300 plus \$10 per tillable acre; and (2) it is devoted to production for sale of livestock, dairy animals, dairy products, poultry and poultry products, fur bearing animals, horticultural and nursery stock, fruit, vegetables, forage, grains, bees and apiary products by the owner, slough, wasteland and certain woodlands. Minn. Stat. § 273.111(6) (1976).

2. has been in the possession of the applicant, his spouse, parent, or sibling for at least 7 years prior to application for benefits, or
3. is the homestead of a shareholder in a family farm corporation. <sup>48/</sup>

If the real estate meets this description, and upon timely application by the owner, <sup>49/</sup> the value is determined solely with reference to its appropriate agricultural classification notwithstanding other sections of the Minn. Stat. to the contrary. <sup>50/</sup> The assessor shall not consider any added values resulting from nonagricultural factors. <sup>51/</sup> In other words, for property tax purposes, agricultural land is valued based on its use as agricultural land regardless of whether it would have a significantly higher value if developed. This enables the farmer to continue to farm land which he would otherwise be forced, because of the tax burden, to develop or sell for development.

If property valued under this section is sold, the portion sold is subject to additional taxes equal to the difference between the taxes

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<sup>48/</sup> Minn. Stat. § 273.111(3) (1976). For purposes of this subdivision, "family farm corporation" means a corporation founded for the purpose of farming and owning agricultural land, in which all of the stockholders are members of a family related to each other within the third degree of kinship according to rules of civil law. Id.

<sup>49/</sup> An application for deferment of taxes and assessment under this section of the law must be made by May 1 of the year in which the taxes became payable. Minn. Stat. § 273.111(8) (1976). An application granted continues in effect for subsequent years until the property no longer qualifies. Id. The application is filed with the assessor of the taxing district in which the property is located, and the assessor may prove by affidavit that the property qualifies. Id.

<sup>50/</sup> Minn. Stat. § 273.111(4) (1976), as amended by ch. 423, Art. III, § 4, 1977 Minn. Sess. Law Serv. (West).

<sup>51/</sup> Id. The assessor does have a duty to consider factors such as location and easement, and for agricultural land, to consider and give recognition to its earning potential as measured by its free market rental rate. See Minn. Stat. § 273.12 (1976).

as determined under this statute and the assessor's separate determination of market value. <sup>52/</sup> This second amount, however, cannot be greater than it would have been had the actual bona fide sale price in an arms length transaction been used in lieu of market value. <sup>53/</sup> No interest or penalties are levied on the additional tax if it is timely paid, and the additional tax is only levied against the last three years that the property was valued and assessed under this statute. <sup>54/</sup>

The tax imposed by this section is a lien upon the property assessed to the same extent and for the same duration as other taxes imposed upon property within the state. <sup>55/</sup>

The payment of local assessments levied since 1967 for improvements made to qualified property, together with the interest thereon, is deferred as long as the property is sold or no longer qualifies, all deferred special assessments plus interest become payable within 90 days. <sup>57/</sup>

Property may qualify for tax assessment under this statute even if production income consists of cash rental. <sup>58/</sup> The property can qualify even if owned by several persons, each holding a fractional interest, and even if all the owners are not engaged in farming activities on such property. <sup>59/</sup>

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<sup>52/</sup> Minn. Stat. § 273.111(9) (1976).

<sup>53/</sup> Id.

<sup>54/</sup> Id.

<sup>55/</sup> Minn. Stat. § 273.111(10) (1976).

<sup>56/</sup> Minn. Stat. § 273.111(11) (1976).

<sup>57/</sup> Id.

<sup>58/</sup> Elwell v. Hennepin County, 301 Minn. 63, 221 N.W.2d 538 (1974).

<sup>59/</sup> Id.

#### 4. Farm Property of Non-residents

When the owner of livestock or other personal property connected with a farm does not reside on that farm, the property is listed and assessed in the town or district where the farm is located. <sup>60/</sup> Grain in an elevator on railroad right of way is listed and assessed in the district where the elevator is situated. <sup>61/</sup>

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<sup>60/</sup> Minn. Stat. § 273.30 (1976). If it is located in more than one town or district, the determination is based upon the principal place of business of such farm. Id.

<sup>61/</sup> Minn. Stat. § 273.31 (1976).

C. Sales Tax

Minnesota law imposes an excise tax of 4 percent of the gross receipts from retail sales. <sup>1/</sup> There are numerous exemptions including gross receipts from the sale of food products. <sup>2/</sup> Food products include, but are not limited to, cereal and cereal products, butter, cheese, milk and milk products, oleo, meat and meat products, fish and fish products, eggs and egg products, vegetables and vegetable products, fruit and fruit products, spices and salt, sugar and sugar products, coffee and coffee substitutes, tea, and cocoa and cocoa products. <sup>3/</sup>

Another exception exists for the gross receipts from the sale and storage, use and consumption of all materials, including chemicals, fuels, petroleum products, lubricants, packaging materials including returnable containers used in packaging food and beverage products, feeds, seeds, fertilizers, electricity, gas and steam, used or consumed in agricultural production of personal property intended to be sold ultimately at retail. <sup>4/</sup> Such property is tax exempt even if the item so used becomes an ingredient or constituent part of the property produced. <sup>5/</sup> Such production includes research, development, design or production of tangible personal property, manufacturing, processing <sup>6/</sup> of agricultural products whether vegetable or animal, commercial fishing, refining, smelting, reducing, brewing, distilling,

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<sup>1/</sup> Minn. Stat. § 297A.02 (1976). Sales through coin-operated vending machines is three percent. Id. Among other things, a sale includes preparing and serving food for consideration (with certain exceptions including hospitals and meals for the elderly). Minn. Stat. § 297A.01(3)(c) (1976).

<sup>2/</sup> Minn. Stat. § 297A.25(1)(a) (1976).

<sup>3/</sup> Id.

<sup>4/</sup> Minn. Stat. § 297A.25(h) (1976).

<sup>5/</sup> Id.

<sup>6/</sup> Except by restaurants and consumers.

printing, mining, quarrying, lumbering, generating electricity and the production of road building materials. <sup>7/</sup> Such production does not include painting, cleaning, repairing, or similar processing of property except as part of the original manufacturing process. <sup>8/</sup> The exemption does not include machinery, equipment, implements, tools, accessories, appliances, contrivances, or furniture and fixtures used in such production, nor does it include fuel, electricity, gas or steam used for space heating or lighting. <sup>9/</sup> However, items having an ordinary useful life of less than 12 months are included within the exemption. <sup>10/</sup>

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<sup>7/</sup> Minn. Stat. § 297A.25(h) (1976).  
<sup>8/</sup> Id.  
<sup>9/</sup> Id.  
<sup>10/</sup> Id.

## V. Cooperatives

Not all cooperatives are alike, but most of them have certain characteristics in common. <sup>1/</sup> For example, they are formed for the mutual benefit of patrons and members. They are run for the benefit of the users, not the owners. As a result of this, members receive one vote regardless of the amount of capital they invest. <sup>2/</sup>

Perhaps the major distinguishing feature is that cooperatives are operated at cost. A farmer is given payment for grain plus a patronage dividend so that the cooperative will have no earnings. All earnings will be distributed. If the cooperative is a supply co-op, the earnings are distributed based upon dollar purchases.

If the cooperative fails to distribute these earnings, it will be required to apy a tax at the corporate rate. <sup>3/</sup> (The cooperative is not tax exempt, but it is allowed to take deductions to match its earnings.) To qualify for this tax advantage, the co-op must be a farmer co-op, and it must make distributions to nonmember patrons. If the co-op does not distribute to nonmember patrons, it should k-ep the records of nonmembers separate to facilitate the payment of taxes on these amounts. <sup>4/</sup> Also, the cooperative must distribute 20 percent of its earnings in cash, as opposed to in certificates, credits, or stock, in order to qualify for the deduction. <sup>5/</sup>

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<sup>1/</sup> Much of the information in this initial description of cooperatives is taken from a lecture by Mr. Morris, a lawyer with the firm of Doherty, Rumble, and Butler in St. Paul, given on October 7, 1977.

<sup>2/</sup> But see Minn. Stat. § 308.07(4) (1976).

<sup>3/</sup> See I.R.C. §§ 521, 1382 et seq.

<sup>4/</sup> But 85 percent of the patrons must be farmers to qualify for the I.R.C. § 521 deduction. Also, voting control must be 80 percent in the hands of farmers to qualify for a loan from the St. Paul Bank.

<sup>5/</sup> A co-op's basic source of capital is the noncash portion of the dividends.

A cooperative is normally a business organization, but its goal is not to maximize earnings. Its goal is to return profits to the patron. The cooperative is normally a corporation, although this is not essential. Incorporation would, of course, give it limited liability.

Minnesota law defines a cooperative association as any corporation or association of ultimate producers or consumers, 6/ but the word ultimate has not been literally applied.

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6/ Minn. Stat. § 308.42 (1976).



A. Formation and Operation

A cooperative association may be formed for the purpose of conducting any agricultural, dairy, marketing, transportation, or warehousing operation. <sup>1/</sup> Such cooperatives have the power to buy, sell, or deal in its own products, the products of its individual members or patrons, and the products of any other cooperative association or its members. <sup>2/</sup> The cooperative may negotiate the price at which these products are sold either for itself or for its patrons or members. <sup>3/</sup> It may enter into a contract either for itself or for its members. <sup>4/</sup> For these purposes, the cooperative has the same power as a corporation to hold, lease, mortgage, encumber, sell, exchange, and convey real estate, buildings and personal property as the business of the association may require. <sup>5/</sup>

A § 308.05-.18 cooperative is empowered to form district, state and national organizations or market agencies, and is so doing, by vote of the governing body thereof, may purchase, acquire, hold or dispose of stock of any other cooperative or corporation, and assume all rights and obligations arising out of the ownership of such stock. <sup>6/</sup> Such a cooperative has the power to perform every act proper to the conduct of its business, and has any right, power or privilege granted an ordinary power or privilege granted an ordinary corporation which is not inconsistent with the provisions

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<sup>1/</sup> Minn. Stat. § 308.05(1) (1976). Cooperatives formed under now §§ 308.01, .02, .03, .30, .31, and .34 may continue to operate pursuant to such sections during the period of their corporate period or until they elect to come under §§ 308.05-.18. Minn. Stat. § 308.17 (1976). See Minn. Stat. § 308.05(3) (1976); Minn. Stat. § 308.14(1) (1976).

<sup>2/</sup> Minn. Stat. § 308.05(1) (1976).

<sup>3/</sup> Id.

<sup>4/</sup> Minn. Stat. § 308.05(1) (1976).

<sup>5/</sup> Id. Also to erect buildings and structures on its own lands. Id.

<sup>6/</sup> Minn. Stat. § 308.05(1) (1976).

of chapter 308. <sup>7/</sup> A 308.05-.18 cooperative comprised wholly or partially of other cooperatives has the power to accept deposits of money or securities from such cooperatives as constitute its membership. <sup>8/</sup>

When authorized by the stockholders, the board of directors may dispose of all or substantially all of the property of the cooperative. <sup>9/</sup>

A cooperative may be organized by five or more incorporators, who may act for themselves or for other cooperatives. <sup>10/</sup> These incorporators must sign and acknowledge written articles of incorporation specifying such things as the name and purpose of the association, its period of duration, information about the cooperative's stock, that stockholders are restricted to one vote, that the shares of stock are transferable only with the approval of the board of directors, that dividends cannot exceed 8 percent annually, and that net income in excess of dividends will be distributed on the basis of patronage. <sup>11/</sup> The articles of incorporation must be filed with the Secretary of State, and a copy must be filed with the county recorder in the county in which the principal place of business of the association is located. <sup>12/</sup>

Unless a corporation provides in its articles of incorporation for a limited period of duration or its corporate existence, it is granted perpetual duration. <sup>13/</sup> When a period of duration expires and the cooperative

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<sup>7/</sup> Id.

<sup>8/</sup> Minn. Stat. § 308.05(2) (1976).

<sup>9/</sup> Minn. Stat. § 308.05(6) (1976).

<sup>10/</sup> Minn. Stat. § 308.06(1) (1976).

<sup>11/</sup> Minn. Stat. § 308.06(2) (1976).

<sup>12/</sup> Minn. Stat. § 308.06(4) (1976). Filing with the Secretary of State requires a fee of \$12.50. Id. In reality the Attorney General must approve the cooperative's Articles of Incorporation. The Secretary of State merely accepts the filing.

<sup>13/</sup> Minn. Stat. § 308.061 (1976).

continues in good faith to transact business, it may at any time renew its corporate existence by amending its articles of incorporation and complying with §§ 308.05-.18. <sup>14/</sup>

The amount of the authorized capital stock, the number of shares, or the par value of the stock may be increased or decreased, or the classes of stock may be established or altered at any appropriately called meeting of the stockholders. <sup>15/</sup> The association may commence business whenever 10 percent of the authorized capital stock has been subscribed and paid in. <sup>16/</sup>

Each stockholder of a cooperative is entitled to one vote. <sup>17/</sup> This vote may not be exercised by proxy. A cooperative holding stock in another cooperative may, however, elect one individual to cast its vote. <sup>18/</sup> An exception to the one vote rule is made for affiliated cooperatives. Each affiliated cooperative may be granted an additional vote based upon a stipulated volume of business or a stipulated number of members in such association, to be determined in either case by the articles and bylaws of the central association. <sup>19/</sup>

A cooperative is required to hold an annual meeting and may call special meetings. <sup>20/</sup> Since proxies are prohibited, one never knows how the annual meeting will turn out. Stockholders can vote by mail on specific questions but not on the board of directors. <sup>21/</sup>

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<sup>14/</sup> Minn. Stat. § 308.062 (1976). See Minn. Stat. § 308.35 (1976).

<sup>15/</sup> Minn. Stat. § 308.07(1) (1976). A co-op does not have to issue stock and some do not because the I.R.S. requires the stockholders list to be current. But stock provides a convenient way of making distributions and of keeping track of membership.

<sup>16/</sup> Minn. Stat. § 308.07(2) (1976).

<sup>17/</sup> Minn. Stat. § 308.07(3) (1976).

<sup>18/</sup> Id.

<sup>19/</sup> Minn. Stat. § 308.07(4) (1976).

<sup>20/</sup> Minn. Stat. § 308.09 (1976). A quorum consists of 10 percent of the members unless the cooperative has over 500 members, in which case a quorum is 50 members. Minn. Stat. § 308.10 (1976).

<sup>21/</sup> See Minn. Stat. § 308.07(10) (1976).

A cooperative is governed by a board of five or more directors and these directors must be members of the association. <sup>22/</sup> If a family farm corporation or an authorized farm corporation is a member of a co-op, the member corporation may elect one stockholder who resides on and is active in the farming operation, and that individual will be eligible for election to the board of directors. <sup>23/</sup> The directors elect a president, vice-president, secretary, and a treasurer (or a secretary-treasurer). <sup>24/</sup> If the bylaws so provide, and the directors elect a chairman and one or more vice-chairmen, the president and vice-president need not be directors or stockholders. <sup>25/</sup> Stockholders can remove any director or officer for cause. <sup>26/</sup>

Cooperatives may set aside a portion of their net income as capital reserve. <sup>27/</sup> They may also set aside up to 5 percent of annual net income for promotion, and may accumulate reserves for other proper purposes such as a building fund. <sup>28/</sup> Distribution of net income must be made at least annually. <sup>29/</sup>

Dissolution of a cooperative may be done voluntarily, out of court, by a vote of two-thirds of those present at a meeting. <sup>30/</sup> The affairs of the co-op are wound up by a designated trustee. <sup>31/</sup> Amendments of articles of incorporation or bylaws require only a majority vote. <sup>32/</sup> A merger requires a two-thirds vote. <sup>33/</sup>

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<sup>22/</sup> Minn. Stat. § 308.11 (1976).

<sup>23/</sup> *Id.* The same is true of other non-natural person members.

<sup>24/</sup> Minn. Stat. § 308.11 (1976).

<sup>25/</sup> *Id.*

<sup>26/</sup> *Id.*

<sup>27/</sup> Minn. Stat. § 308.12 (1976).

<sup>28/</sup> *Id.*

<sup>29/</sup> *Id.*

<sup>30/</sup> Minn. Stat. § 308.14(2) (1976).

<sup>31/</sup> *Id.*

<sup>32/</sup> Minn. Stat. § 308.15 (1976).

<sup>33/</sup> Minn. Stat. § 308.15(4) (1976).

An organization which is defectively organized and which has conducted its business upon the cooperative plan and has in good faith carried on and transacted business may amend its articles of incorporation and come within the provisions of §§ 308.05-.18. <sup>34/</sup>

A creamery co-op has the eminent domain right to condemn land for easement for sewers and sites for filtration plants to take care of sewage and refuse made in operation of its business. <sup>35/</sup> The Supreme Court of Minnesota has declined to hold the provision of the law unconstitutional. <sup>36/</sup>

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<sup>34/</sup> Minn. Stat. §§ 308.36, .361 (1976).

<sup>35/</sup> Minn. Stat. §§ 308.39 (1976). This power is exercised pursuant to chapter 117.

<sup>36/</sup> Oak Center Creamery Co. v. Grobe, 262 Minn. 60, 113 N.W.2d 458 (1962), rehearing 264 Minn. 435, 119 N.W.2d (1963).

B. Cooperative Marketing Act

The Cooperative Marketing Act <sup>1/</sup> was passed in 1923 to encourage the marketing of agricultural products through cooperation to make the distribution of agricultural products as direct as can be efficiently done between producer and consumer and to stabilize the marketing problems of agricultural products. <sup>2/</sup> A cooperative may be organized under this act to engage in any activity in connection with the marketing or selling of agricultural products, or with preparing or manufacturing thereof, or in connection with providing its members with machinery, equipment or supplies, or with the financing of any of these activities. <sup>3/</sup>

A nonprofit cooperative association may be organized under this act by five or more persons engaged in the production of agricultural products. <sup>4/</sup> It has broad powers to do whatever is necessary to accomplish its purpose. <sup>5/</sup> Members must be either co-ops or persons engaged in the production of agricultural products to be handled by or through the association. <sup>6/</sup>

The articles of incorporation of this type of co-op must set forth a number of specific things including principal place of business, purposes for which formed, and information about capital stock. <sup>7/</sup> These articles must be filed with the Secretary of State and the Secretary of Agriculture. <sup>8/</sup> An amendment to the articles must be approved by two-thirds of the directors

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<sup>1/</sup> Minn. Stat. §§ 308.51 et seq. (1976).

<sup>2/</sup> Minn. Stat. § 308.53 (1976).

<sup>3/</sup> Minn. Stat. § 308.55 (1976).

<sup>4/</sup> Minn. Stat. § 308.54 (1976). This is the significant distinction between this type of co-op and a § 308.05-.18 co-op.

<sup>5/</sup> Minn. Stat. § 308.56 (1976).

<sup>6/</sup> Minn. Stat. § 308.57 (1976).

<sup>7/</sup> Minn. Stat. § 308.58 (1976). These co-ops are granted perpetual duration. Minn. Stat. § 308.85 (1976).

<sup>8/</sup> Id. There is a \$10 filing fee. Minn. Stat. § 308.85 (1976).

and then a majority of the stockholders. <sup>9/</sup> Bylaws provide for such things as calling meetings, what constitutes a quorum, voting rights, qualifications of officers and directors, penalties for violation of the bylaws, entrance and membership fees, the form of the marketing contract between the association and its members and the qualifications and conditions of membership and stock ownership. <sup>10/</sup>

Each cooperative must hold a regular meeting at least annually and special meetings can be called by the board of directors or by a petition signed by 10 percent of stockholders. <sup>11/</sup>

The affairs of the co-op are managed by the board of directors elected by the members or stockholders. <sup>12/</sup> One (or more) additional director is appointed by the Commissioner of Agriculture. <sup>13/</sup> The directors elect the cooperative's officers from their own number. <sup>14/</sup>

Cooperative members are not liable for the debts of the association beyond the amount of any unpaid membership fee. <sup>15/</sup> No stockholder may:

- (i) own more than one-twentieth of the common stock of the association,
- (ii) be entitled to more than one vote unless the stockholder is a local cooperative association, or (iii) transfer his stock (or certificate to, if established without capital stock) to persons not engaged in the production of agricultural products. <sup>16/</sup>

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<sup>9/</sup> Minn. Stat. § 308.59 (1976). These also must be filed in the same manner as the original. Id.

<sup>10/</sup> Minn. Stat. § 308.60 (1976).

<sup>11/</sup> Minn. Stat. § 308.61 (1976).

<sup>12/</sup> Minn. Stat. § 308.62 (1976).

<sup>13/</sup> Id. Such director need not be a member or stockholder.

<sup>14/</sup> Minn. Stat. § 308.63 (1976). Officers and other agents dealing with funds are required to post a bond. Minn. Stat. § 308.64 (1976).

<sup>15/</sup> Minn. Stat. § 308.65 (1976).

<sup>16/</sup> Id.

Any stockholder may bring charge against an officer or director, together with a petition for removal signed by 10 percent of the members. <sup>17/</sup> The removal will be voted on at the next properly scheduled meeting, and the officer or director will be removed by a majority vote of the members. <sup>18/</sup> A vote of one-third of the board of directors will require that any policy approved by the board be referred to the entire membership or the stockholders. <sup>19/</sup>

A cooperative may contract with its members or patrons requiring the members or patrons to sell to or through the association. <sup>20/</sup> The contract may provide that the co-op takes title, in which case title passes upon delivery or when otherwise contractually agreed to, or that the co-op will resell the product without taking title. <sup>21/</sup> The contract cannot exceed five years, although it may be self-renewing with termination rights after the expiration of the contracted for period. <sup>22/</sup> The contract or the bylaws of the co-op may provide for liquidated damages for member/stockholder breach, and that the member/stockholder must pay all costs of any action brought on the breach. <sup>23/</sup> In the event of a breach, the co-op is entitled to an injunction to prevent further breach, and to a decree of specific performance. <sup>24/</sup> Any person who attempts to induce another to break his marketing contract, or who spreads false rumors about the finances of a co-op is guilty of a misdemeanor and subject to limited civil liability. <sup>25/</sup>

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<sup>17/</sup> Minn. Stat. § 308.66 (1976).

<sup>18/</sup> Id.

<sup>19/</sup> Minn. Stat. § 308.67 (1976).

<sup>20/</sup> Minn. Stat. § 308.68 (1976). Note that this provision and §§ 308.69 and .78 apply to § 308.05-.18 cooperatives. Minn. Stat. § 308.05(4) (1976). A marketing act co-op may also contract with other associations. Minn. Stat. 308.75 (1976).

<sup>21/</sup> Id.

<sup>22/</sup> Id.

<sup>23/</sup> Minn. Stat. § 308.69 (1976).

<sup>24/</sup> Id.

<sup>25/</sup> Minn. Stat. § 308.78 (1976).



Marketing Act co-ops are required to file an annual report with the Commissioner of Agriculture showing the general financial condition of the co-op. 26/

A Marketing Act co-op is not a combination in restraint of trade, an illegal monopoly, nor an attempt to lessen competition or to fix prices arbitrarily, nor is a marketing contract such an illegal trade practice. 27/

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26/ Minn. Stat. § 308.71 (1976). Marketing Act co-ops are under the control of the Commissioner of Agriculture and he has certain supervisory powers over them. See Minn. Stat. § 308.82 (1976).

27/ Minn. Stat. § 308.80 (1976). See section D, infra.

C. Securities Exemption

Certain securities transactions engaged in by chapter 308 cooperatives are exempt from the registration and filing of literature requirements of Minnesota securities regulation law. <sup>1/</sup> The exempt transactions are the offer and sale by a co-op of its securities when these securities are offered and sold only to its members, the purchase of such securities when incidental to establishing membership in the co-op, and when the co-op issues the securities as patronage dividends.

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<sup>1/</sup> Minn. Stat. § 80A.15(2)(j) (1976).

D. Unfair Trade Practices Exemption

The Unlawful Trade Practices Act <sup>1/</sup> makes it an unlawful trade practice for any seller to claim or imply that any sale of goods is a transfer at wholesale unless such sale is made to a transferee for resale or is a sale of a substantial quantity of merchandise for business use only. <sup>2/</sup> The Act also prohibits retailers from misrepresentating the nature of their business by: (i) the use of the words wholesale or broker or their synonyms, (ii) misrepresenting that the price of their merchandise is approximately wholesale, (iii) fictitiously showing prices in excess of actual prices in their advertising, or (iv) misrepresenting the true quality or ingredients of their merchandise. <sup>3/</sup> These proscriptions do not apply to duly organized cooperatives with respect to merchandising transactions which the cooperative is authorized by its charter to conduct. <sup>4/</sup>

The Minnesota Antitrust Law of 1971 <sup>5/</sup> prohibits combinations or conspiracies in restraint of trade, the establishment or use of monopoly power for the purpose of affecting competition, price fixing, production control to affect price, dividing up of markets, collusive bidding on public contracts and certain concerted refusals to deal. <sup>6/</sup> These provisions do not forbid the existence or operation of agricultural or horticultural organizations

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<sup>1/</sup> Minn. Stat. §§ 325.141-.148 (1976).

<sup>2/</sup> Minn. Stat. § 325.143 (1976).

<sup>3/</sup> Minn. Stat. §§ 325.144, .145 (1976).

<sup>4/</sup> Minn. Stat. § 325.146 (1976).

<sup>5/</sup> Minn. Stat. §§ 325.8011-.8028 (1976).

<sup>6/</sup> Minn. Stat. §§ 325.8013-.8015 (1976).

instituted for the purpose of mutual help and not conducted for profit, nor does it forbid the members of such organizations from carrying out the legitimate objectives of such organizations. <sup>7/</sup> Such organizations will not be held to be illegal combinations in restraint of trade. <sup>8/</sup>

Cooperatives are not specifically exempted from the Act against Unfair Discrimination and Competition <sup>9/</sup> which, in general, prohibits selling below cost; the Prevention of Consumer Fraud Act <sup>10/</sup> which prohibits consumer fraud or the Uniform Deceptive Trade Practices Act <sup>11/</sup> which prohibits the misrepresentation of the source, approval, quality, etc. of goods.

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<sup>7/</sup> Minn. Stat. § 325.8017 (1976).

<sup>8/</sup> Id. See Minn. Stat. § 308.80 (1976).

<sup>9/</sup> Minn. Stat. §§ 325.03-.075 (1976).

<sup>10/</sup> Minn. Stat. §§ 325.79-.80 (1976).

<sup>11/</sup> Minn. Stat. §§ 325.79-.77-.776 (1976).

## VI. TRADE PRACTICES

This chapter discusses two separate aspects of the concept of trade practices. The first part of the chapter deals with those provisions of Minnesota law which involve the marketing of agricultural products. The second part of the chapter addresses the state law regulating trade practices, restraint of trade and those laws which come within the broad definition of antitrust. Antitrust law dealing specifically with cooperative associations was addressed in the immediately preceding chapter.

As with the remainder of this outline, only Minnesota law of significance to agriculture is discussed.

A. Marketing

This section of the outline deals with special provisions of Minnesota law dealing with marketing of agricultural products. These provisions are the Agricultural Marketing and Bargaining Act, the Livestock Market Agency and Dealer Licensing Act, the Commodities Promotion Act and other product promotion statutes, and, finally, provisions dealing with public markets and the sale of farm products.

1. The Agricultural Marketing and Bargaining Act

The policy behind the Agricultural Marketing and Bargaining Act <sup>1/</sup> is to allow producers <sup>2/</sup> of agricultural products to join together and bargain collectively in a process which is both fair to producers and handlers <sup>3/</sup> and in the public interest. <sup>4/</sup> Bargaining is defined in a manner similar to the definition of that concept under the National Labor Relations Act. It imposes a mutual obligation on the handler and an association or its representative to meet at reasonable times and to confer and negotiate in good faith. <sup>5/</sup> Negotiations may include such terms as: <sup>6/</sup>

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<sup>1/</sup> Minn. Stat. §§ 17.691-.701 (1976).

<sup>2/</sup> A "producer" is any person who, in one of the last two years, produces an agricultural commodity (see Minn. Stat. § 17.693(5)) in quantity beyond his family use and who is able to transfer, to a handler, merchantable title in that commodity or provide management, labor, machinery, facilities or other production input, with the assumption of risk, for the production of the agricultural commodity under a written contract. Minn. Stat. § 17.693(4) (1976).

<sup>3/</sup> A "handler" is a person (other than an association) engaged in the business of acquiring agricultural commodities from producers or associations for processing or sale. The term includes persons negotiating contracts with producers or associations with respect to production of any agricultural commodity, and agents of handlers. It does not include persons who sell what they have produced. Minn. Stat. § 17.693(6) (1976).

<sup>4/</sup> Minn. Stat. § 17.692 (1976).

<sup>5/</sup> Minn. Stat. § 17.697(1) (1976).

<sup>6/</sup> Id.

- a. prices and terms of sale;
- b. quality specifications;
- c. quantity to be marketed by acreage or weight;
- d. transactions involving products and services used by one party and provided by the other; or
- e. check-off procedures for assessments levied by the association (not to exceed one-half of one percent of the gross value of the producer's annual production contract).

To come within the protection of this Act, a bargaining association must be accredited. <sup>7/</sup> To receive accreditation, the association must file with the Commissioner of Agriculture a request containing the names and addresses of member producers, the name of each handler to whom the member producer delivered or contracted to deliver during the previous two years, and the quantity delivered or acreage grown. <sup>8/</sup> The Commissioner may then require all handlers of an agricultural commodity produced in a bargaining unit area to file within 30 days a report showing the names and addresses of all producers of the commodity who have delivered the commodity to the handler during the two years preceding the report and the quantities of each commodity received from each named producer during that period. <sup>9/</sup>

In considering the producers' request the Commissioner must determine the appropriate bargaining unit area and whether bargaining is to be by plant, processor, or company. <sup>10/</sup> An appropriate bargaining unit area is the largest bargaining unit area in terms of quantity of the commodity produced,

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<sup>7/</sup> See Minn. Stat. § 17.694 (1976).

<sup>8/</sup> Minn. Stat. § 17.694(1) (1976). This filing requires a fee.

<sup>9/</sup> Minn. Stat. § 17.694(1) (1976). The information in these handler reports cannot be made public. Id.

<sup>10/</sup> Minn. Stat. § 17.694(2) (1976).

the definition of the commodity, geographic area and number of producers included is consistent with the following: 11/

- a. The community of interests of the producers included;
- b. the potential conflicts of interests among members;
- c. the effect of exclusions on the capacity of the association to effectively bargain for the bargaining unit as defined;
- d. the kinds and subtypes of products classed together as agricultural commodity for which the bargaining unit is proposed;
- e. whether the producers eligible for membership meet the definition of "producer" for the commodity involved;
- f. the wishes of the producers; and
- g. the pattern of past marketing of the commodity.

To become accredited, an association must comply with certain conditions. 12/  
It must meet the requirements of the Capper-Volstead Act. 13/ Its bylaws must provide that each member of the association has one vote in all votes of the membership of the association that officers and directors are elected by a majority of the members, voting or by delegates representing a majority of the membership, and that all elections are by secret ballot. Finally, the association must have, if its request is approved, marketing and bargaining contracts with more than 50 percent of the producers of an agricultural commodity who are in the bargaining unit area, and these contracts must cover more than 50 percent of the quantity of that commodity produced by

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11/ Id.

12/ See Minn. Stat. § 17.694(3) (1976).

13/ 7 U.S.C. §§ 291-2 (1976).



producers in the bargaining area. <sup>14/</sup>

The Commissioner has 60 days to determine whether an association shall become accredited. <sup>15/</sup> If insufficient evidence was filed, the Commissioner may permit the association to file an amended request. <sup>16/</sup> The Commissioner then has 30 days to determine whether the association is to be accredited. <sup>17/</sup> If accreditation is denied, the association denied may not file another request for accreditation for one year. <sup>18/</sup>

If the Commissioner denies accreditation, the association has 30 days to request a hearing. <sup>19/</sup> This hearing is conducted by the Commissioner. <sup>20/</sup> If accreditation is still denied, the association can appeal pursuant to laws governing appeals from administrative determinations. <sup>21/</sup> The Commissioner may consider revocation of accreditation upon request from the association for its own disaccreditation or upon receipt of a petition requesting disaccreditation, such petition having been signed by 10 percent of the producers of an accredited association within the bargaining unit. <sup>22/</sup>

Once an association is accredited, it represents all member producers in the bargaining unit area, as it is the exclusive sales agent for the unit area in negotiations with handlers. <sup>23/</sup> The association cannot represent those producers who choose not to have a bargaining committee bargain for them. <sup>24/</sup> In contrast, the Michigan marketing and bargaining act provides

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<sup>14/</sup> This provision also gives the Commissioner guidance in determining the quantity produced in the bargaining unit area.

<sup>15/</sup> Minn. Stat. § 17.694(4) (1976).

<sup>16/</sup> Id.

<sup>17/</sup> Id.

<sup>18/</sup> Id.

<sup>19/</sup> Minn. Stat. § 17.694(4a) (1976).

<sup>20/</sup> Id.

<sup>21/</sup> Id. See Minn. Stat. §§ 15.0424-.0425 (1976).

<sup>22/</sup> Minn. Stat. § 17.694(6) (1976). Upon such a request, the Commission will initiate a referendum, and if 50 percent of the producers of the commodity approve, accreditation will be revoked. Id.

<sup>23/</sup> Minn. Stat. § 17.694(7) (1976).

<sup>24/</sup> Id.

that an accredited association represents all producers in a bargaining unit area regardless of whether they would prefer not to be represented. The constitutionality of the Michigan act is now being challenged in that state's courts.

Once an association is accredited, it establishes a marketing and bargaining committee to negotiate, as the association's exclusive agent, with handlers for the sale and marketing of the commodity for which it is accredited. <sup>25/</sup> This committee is comprised of members of the association elected by secret ballot, and, at the association's discretion, contracted for legal counsel. <sup>26/</sup> Each committee member must engage in the production of the commodity such that production of that commodity comprises a significant portion of his total production. <sup>27/</sup> Members who contract, in any quantity, with a producer-owned and controlled processing cooperative are not eligible for the committee. <sup>28/</sup>

After accreditation, there are certain practices which the handler cannot engage in and other practices which the association is prohibited from engaging in. A handler may not: (a) coerce, or refuse to deal with, a producer who has exercised his right to join or refrain from joining in an association, (b) discriminate against a producer because of his membership or contract with an association, (c) coerce or intimidate a producer to breach a membership agreement or marketing contract, (d) give or offer anything of value to a producer for refusing or ceasing to join an association, (e) circulate unsubstantiated reports about the finances, management or

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<sup>25/</sup> Minn. Stat. § 16.695(1) (1976).  
<sup>26/</sup> Minn. Stat. § 17.695(2) (1976).  
<sup>27/</sup> Minn. Stat. § 17.695(3) (1976).  
<sup>28/</sup> Minn. Stat. § 17.695(4) (1976).

activities of association or other handlers, (f) conspire in or aid and abet in any violations of the Act, or (g) refuse to bargain with an association with whom the handler has had prior dealings or an association whose producers have had dealings with the handler prior to July 1, 1973. <sup>29/</sup>

An association may not: (a) enter into a contract which discriminates against a producer represented by the association, (b) act in a manner contrary to the bylaws of the association, (c) coerce or intimidate a handler to breach or terminate an agreement or marketing contract, (d) circulate unsubstantiated reports about the finances, management or activities of other associations or handlers, or (e) conspire or aid or abet in any violation of the Act. <sup>30/</sup>

When an association commences bargaining, it must notify the Commissioner. <sup>31/</sup> If agreement is not reached within 10 days after service of such notice, the association may petition the Commissioner to assume supervision over the dispute. <sup>32/</sup> Upon such a request, the Commissioner sets a time and place for conference and for hearing each parties arguments. <sup>33/</sup> He takes whatever steps he deems expedient to affect a voluntary and expeditious settlement. <sup>34/</sup>

Up until 15 days before the start of the marketing year, <sup>35/</sup> the handler can elect not to purchase any commodity produced by the association during that year. <sup>36/</sup> The producers, on the other hand, can elect not to sell any

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<sup>29/</sup> Minn. Stat. § 17.696(1) (1976).

<sup>30/</sup> Minn. Stat. § 17.696(2) (1976).

<sup>31/</sup> Minn. Stat. § 17.697(2) (1976).

<sup>32/</sup> Minn. Stat. § 17.697(3)(a) (1976).

<sup>33/</sup> Minn. Stat. § 17.697(3)(b) (1976).

<sup>34/</sup> Id.

<sup>35/</sup> The marketing year runs from February 2 to February 1 of the following year unless an alternative year for a specific commodity is established by the Commissioner of Agriculture. Minn. Stat. § 17.693(8) (1976).

<sup>36/</sup> Minn. Stat. § 17.697(3)(c) (1976).

quantity of the commodity to the handler with whom they cannot reach agreement. <sup>37/</sup> If either party makes such an election, the other party cannot continue bargaining with the party so electing during the period in dispute. <sup>38/</sup> If the petition requesting the Commissioner to assume supervision is presented within 15 days before the marketing year in dispute, the Commissioner shall determine which disputes are arbitrable. <sup>39/</sup>

All mediation and bargaining is based upon a limited list of factors such as prices paid by competing handlers or in competing market areas, production or projected production, cost of living, fair returns on investment, etc. <sup>40/</sup>

The Commissioner is required to announce his findings and decision in all cases in which he has assumed supervision by the 15th day of the marketing year. <sup>41/</sup> In expediting his decisions, he may use the Bureau of Mediation Services. <sup>42/</sup>

Complaints of violations are also received by the Commissioner, and he makes any necessary investigation of such complaints. <sup>43/</sup> If he finds reasonable cause to believe a violation has occurred, he will issue a complaint summoning the person to a hearing. <sup>44/</sup> If it is found that the person committed a violation, an order will be issued requiring him to cease the violation. <sup>45/</sup> If it is found that no violation has been committed, an

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<sup>37/</sup> Id.

<sup>38/</sup> Minn. Stat. § 17.697(3)(d) (1976).

<sup>39/</sup> Minn. Stat. § 17.697(3)(e) (1976).

<sup>40/</sup> Minn. Stat. § 17.698 (1976). The statute lists 11 such factors.

<sup>41/</sup> Minn. Stat. § 17.699 (1976). See note 35, *supra*.

<sup>42/</sup> Minn. Stat. § 17.699 (1976).

<sup>43/</sup> Minn. Stat. § 17.70(1) (1976).

<sup>44/</sup> Id.

<sup>45/</sup> Minn. Stat. § 17.70(2) (1976).

order will be issued dismissing the complaint. <sup>46/</sup> The Commissioner retains jurisdiction to modify or set aside any such order until a case has been filed in a court. <sup>47/</sup> The Commissioner may also request the Attorney General to seek relief in district court to insure enforcement of his findings. <sup>48/</sup>

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<sup>46/</sup> Minn. Stat. § 17.70(2) (1976).  
<sup>47/</sup> Minn. Stat. § 17.70(3) (1976).  
<sup>48/</sup> Minn. Stat. § 17.70(5) (1976).

2. Livestock Market Agency and Dealer Licensing Act

The purpose of the Minnesota Livestock Market Agency and Dealer Licensing Act <sup>1/</sup> is to establish jurisdiction and authority with the Commissioner of Agriculture over livestock marketing practices for the benefit and protection of farmers, producers, and the public, and to require financial responsibility and fair trade practices in livestock dealing and marketing. <sup>2/</sup> Livestock, for purposes of the Act, means cattle, sheep, swine, horses, mules, and goats. <sup>3/</sup>

The general thrust of the Act is to require licensing of livestock market agenices, <sup>4/</sup> public stockyards, <sup>5/</sup> and livestock dealers and their agents; <sup>6/</sup> bonding of livestock market agenices and livestock dealers; and the placement of livestock weighers at certain facilities.

Livestock market agencies and public stockyards are issued a license which expires on December 31 of each year, and this license must be conspicuously posted at the licensee's place of business. <sup>7/</sup> The licensing period for livestock dealers and their agents runs from July 1 through June 30 of the following year. <sup>8/</sup> This license must be carried on the dealer

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<sup>1/</sup> Minn. Stat. §§ 17A.01-.15 (1976).

<sup>2/</sup> Minn. Stat. § 17A.02 (1976).

<sup>3/</sup> Minn. Stat. § 17A.03(5) (1976).

<sup>4/</sup> A "livestock market agency" is any person who sells consigned livestock for the account of others, but does not include an occasional or special event or disposal sale. Minn. Stat. § 17A.03(6) (1976), as amended by Act of May 26, 1977, ch. 299, § 1, Minn. Sess. Law Serv. (West).

<sup>5/</sup> A "public stockyard" is an assembly point operated as a public livestock market for livestock producers, feeders, market agencies and buyers. It provides services and facilities for loading and unloading, yarding and sale of all classes of livestock to individuals and organizations granted the privilege of the market by the management of public stockyards. Minn. Stat. § 17.03(12) (1976).

<sup>6/</sup> A "livestock dealer" is a person, including a packing company, who buys and sells livestock for his own account or the account of others. The term does not include persons buying or selling livestock related to a normal farming operation, nor does it include a person licensed under the Consolidated Food Licensing Law (§ 28A.04) who are primarily engaged in the sale of meats at retail and persons operating as forzen food processing plants as defined in § 31.185. Minn. Stat. § 17.03(7) (1976), as amended by Act of May 26, 1977, ch. 299, § 2, Minn. Sess. Law Serv. (West).

<sup>7/</sup> Minn. Stat. § 17.04(1) (1976), as amended by Act of May 26, 1977, ch. 299, § 3, Minn. Sess. Law Serv. (West).

<sup>8/</sup> Id. The livestock dealer is responsible for the acts of his agent. Id.

or agent's person. <sup>9/</sup> These licenses are not transferable. <sup>10/</sup>

Licenses are acquired by applying to the Commissioner. <sup>11/</sup> The applicant is required to file certain financial information with the application and a report on the volume of business is required with an annual renewal. <sup>12/</sup> A valid and effective bond must also be filed with the application. <sup>13/</sup> License fees are \$100 for a livestock market agency or a public stockyard, \$35 for a livestock dealer, and \$20 for a livestock dealer's agent. <sup>14/</sup>

The Commissioner may refuse a license if the form or amount of the bond is incorrect, if the financial data does not show that the applicant's assets exceed his liabilities, if the applicant has failed to pay an obligation incurred in connection with a livestock transaction, or if the applicant has failed to comply with other statutes or rules and regulations enforced by the Commissioner or the Livestock Sanitation Board. <sup>15/</sup> He also has the power to revoke licenses if certain violations are found, at a hearing, to exist. <sup>16/</sup> Finally, the Commissioner can, without a hearing, suspend a license if continued activity of the license will cause irreparable harm and if the Commissioner immediately initiates procedures to afford the licensee a hearing. <sup>17/</sup>

The bond posted by livestock market agencies cannot be less than \$10,000 and may be greater as the Commissioner sees fit based upon such factors as

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<sup>9/</sup> Minn. Stat. § 17.04(1) (1976), as amended.  
<sup>10/</sup> Id.  
<sup>11/</sup> Minn. Stat. § 17.04(2) (1976).  
<sup>12/</sup> Minn. Stat. § 17.04(3) (1976).  
<sup>13/</sup> Minn. Stat. § 17.04(4) (1976).  
<sup>14/</sup> Minn. Stat. § 17.04(5) (1976).  
<sup>15/</sup> Minn. Stat. § 17.04(6) (1976).  
<sup>16/</sup> Minn. Stat. § 17.04(7) (1976).  
<sup>17/</sup> Act of May 26, 1977, ch. 299, § 4, Minn. Sess. Law Serv. (West), adding Minn. Stat. § 17A.04(8).

the licensee's financial statement and his volume of business. <sup>18/</sup> The bond for livestock dealers cannot be less than \$5000. <sup>19/</sup>

A claim against a bond is filed with the Commissioner. <sup>20/</sup> A hearing is held unless all parties to the proceedings waive their right to such in favor of the Commissioner's determination. <sup>21/</sup> If a hearing is held, notice must be given to all known potential claimants by certified mail and to all other claimants by publication. <sup>22/</sup> No claim, however, will be allowed unless it is filed within one year of the date of the transaction. <sup>23/</sup>

Under the Act, it is unlawful for any person to: (1) carry on the business of a livestock market agency or livestock dealer without a valid license, (2) carry on such a business without filing and maintaining a valid bond, (3) carry on such a business when unable to pay debts as they become due or ceasing to pay debts in the ordinary course of business as they become due, (4) engage in unfair or deceptive practices in connection with marketing of livestock, or (5) willfully make, or cause to be made, any false statement or entry in an application, financial statement, or report filed under the Act. <sup>24/</sup>

Persons covered by the Act must make and retain such records as are necessary to disclose all transactions involved in the business, including the true ownership of such business. <sup>25/</sup> The Commissioner has the right

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<sup>18/</sup> Minn. Stat. § 17.05(1) (1976).

<sup>19/</sup> Minn. Stat. § 17.05(2) (1976), as amended by Act of May 26, 1977, ch. 299, § 5, Minn. Sess. Law Serv. (West).

<sup>20/</sup> Minn. Stat. § 17A.06(1) (1976).

<sup>21/</sup> Minn. Stat. § 17A.06(2) (1976), as amended by Act of May 26, 1977, ch. 299, § 6, 1977 Minn. Sess. Law Serv. (West).

<sup>22/</sup> Minn. Stat. § 17A.06(3) (1976), as amended by Act of May 26, 1977, ch. 299, § 7, 1977 Minn. Sess. Law Serv. (West).

<sup>23/</sup> Id.

<sup>24/</sup> Minn. Stat. § 17A.07 (1976).

<sup>25/</sup> Minn. Stat. § 17A.08 (1976).



to examine or copy, at a reasonable time, documentary evidence of any person being investigated or proceeded against. 26/

The Commissioner appoints weighers for weighing livestock at public stockyards, packing plants, slaughter houses, buying stations and livestock market agencies where the average daily number of livestock weighed is 500 head or more. 27/ He may appoint weighers in facilities where the average daily number weighed is less than 500. 28/ No weigher is required at facilities where the only livestock handled has been previously purchased or acquired and title already established. 29/

Weighers weigh all livestock coming to these places for sale and keep a record thereof. 30/ Upon request, an interested party may obtain a certificate setting forth the number of animals weighed and the actual weight of such animals. 31/ This certificate is prima facie evidence of the facts therein certified. 32/ The scales at such places must be constructed and maintained in accordance with the requirements of the State Division of Weights and Measures and must be tested every 90 days. 33/

The fee for this weighing is assessed and collected from the seller. 34/

A weigher cannot be, during his term of service, financially interested in the handling, shipping, purchase or sale of livestock, nor in the employment

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26/ Id.

27/ Minn. Stat. § 17A.10 (1976), as amended by Act of May 26, 1977, ch. 299, § 8, 1977 Minn. Sess. Law Serv. (West).

28/ Id.

29/ Id.

30/ Id.

31/ Id.

32/ Id.

33/ Id.

34/ Minn. Stat. § 17A.11 (1976), as amended by Act of May 26, 1977, ch. 299, § 9, 1977 Minn. Sess. Law Serv. (West).

of persons engaged therein. 35/ It is a gross misdemeanor for a weigher to knowingly or carelessly weigh livestock improperly, to give false certification of weight, to accept consideration for improper performance, or to neglect his duty. 36/ It is a gross misdemeanor for any person to attempt to influence a weigher either by preventing his proper access to the scales or otherwise. 37/ Any person who otherwise violates the Act commits a misdemeanor. 38/

The Commissioner has the authority to promulgate such rules and regulations as are necessary to carry out the provisions of the Act. 39/ He also has the necessary powers to properly investigate any matter relating to the Act. 40/

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35/ Minn. Stat. § 17A.12 (1976).

36/ Minn. Stat. § 17A.13 (1976).

37/ Id.

38/ Minn. Stat. § 17A.14 (1976). A second violation within a licensing period is a gross misdemeanor. Id.

39/ Minn. Stat. § 17A.15 (1976). The Commissioner also has the authority to promulgate regulations regulating feeder pig markets. Minn. Stat. § 17A.09 (1976).

40/ Id.

### 3. Commodities Promotion Act

The purpose of the Agricultural Commodities Promotion Act (ACPA) <sup>1/</sup> is to facilitate promotion and stimulate the use, sale, and consumption of Minnesota agricultural commodities. <sup>2/</sup> This is accomplished by establishing the Minnesota Agricultural Commodity Research and Promotion Councils. <sup>3/</sup>

A council is created when the producers <sup>4/</sup> of an agricultural commodity file a petition with the Commission of Agriculture requesting that such commodity be subject to ACPA. <sup>5/</sup> This petition must be signed by 500 or more producers of such commodity, or 15 percent, whichever is less. <sup>6/</sup> The petition must also be certified by at least two producers to have been signed only by producers of the commodity involved. <sup>7/</sup> Upon petition, the Commissioner will determine the size of the council and the distribution of membership. <sup>8/</sup> He may designate industry or University of Minnesota personnel to serve as consultants to the council. <sup>9/</sup>

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<sup>1/</sup> Minn. Stat. §§ 17.51-.69 (1976).

<sup>2/</sup> Minn. Stat. § 17.52 (1976). An "agricultural commodity" is any agricultural product, including without limitation animals and animal products, grown, raised, produced, or fed within Minnesota for use as food, feed, seed or other industrial or chemurgic purpose. Minn. Stat. § 17.53(2) (1976).

<sup>3/</sup> Minn. Stat. § 17.52 (1976); see Minn. Stat. § 17.54 (1976).

<sup>4/</sup> A "producer" is a person who owns or operates an agricultural producing or growing facility for the commodity under consideration, and who shares in the profits and risk of loss from such facility, and who grows, raises, feeds, or produces such commodity in Minnesota during the current or preceding marketing year. Minn. Stat. § 17.53(8) (1976).

<sup>5/</sup> Minn. Stat. § 17.54(1) (1976).

<sup>6/</sup> Id.

<sup>7/</sup> Id.

<sup>8/</sup> Minn. Stat. § 17.54(2) (1976).

<sup>9/</sup> Id.

Within 30 days the Commissioner will appoint a nominating committee of five producers of the commodity involved and within 60 days of the filing of the petition, they will nominate two producer candidates for each council position. <sup>10/</sup> The area to be organized will include the entire state unless 95 percent of the production of the commodity is in a lesser area, in which event the area will be defined using county lines. <sup>11/</sup> The Commissioner will promptly arrange an election with seven days notice in legal newspapers having general circulation in the organized area. <sup>12/</sup> Only producers of the commodity involved can vote. <sup>13/</sup> There will thereafter be an election each year. <sup>14/</sup> The council members have three year terms with one-third of the members elected each year. <sup>15/</sup> The Commissioner is chairman of the council without vote. <sup>16/</sup>

The board meets at such time and place as it shall determine, or upon call of the chairman, or of any three members of the council. <sup>17/</sup> A majority of the members of the board constitutes a quorum. <sup>18/</sup> Within 15 days after its election, the board will meet and formulate a promotion order for the development, promotion, advertising, research, distribution, and expansion of the sale, use, and consumption of the commodity it represents. <sup>19/</sup> It will also establish fees to be paid by producers to finance the proposed activities. <sup>20/</sup>

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<sup>10/</sup> Minn. Stat. § 17.54(3) (1976).

<sup>11/</sup> Id.

<sup>12/</sup> Id.

<sup>13/</sup> Id. See note 4, *supra*.

<sup>14/</sup> Minn. Stat. § 17.54(3) (1976).

<sup>15/</sup> Minn. Stat. § 17.54(4) (1976).

<sup>16/</sup> Minn. Stat. § 17.54(5) (1976).

<sup>17/</sup> Minn. Stat. § 17.55 (1976).

<sup>18/</sup> Id.

<sup>19/</sup> Minn. Stat. § 17.56(1) (1976).

<sup>20/</sup> Id.

The Commissioner will hold hearings on the proposed promotion order. <sup>21/</sup>  
Like hearings will be held for amended or supplemented promotion orders. <sup>22/</sup>  
A referendum will be held on the final promotion order, and it will become  
effective if approved by a majority of those voting. <sup>23/</sup>

The council shall also set minimum requirements for being a producer,  
recommend amendments to the promotion order, prepare an annual budget and  
submit an annual report. <sup>24/</sup> It shall provide a procedure for collection of  
producer assessments, and for refund to any producer who objects. <sup>25/</sup> The  
council has the right to prosecute in the name of the State of Minnesota to  
enforce collection or insure payment of authorized fees and to sue or be  
sued. <sup>26/</sup> It must provide for an annual audit by a certified audit firm. <sup>27/</sup>

The Commissioner has the power to contract for market development,  
education, publicity, promotion, reserach, transportation, and advertising  
within the purposes of ACPA. <sup>28/</sup> He also has certain authority over personnel. <sup>29/</sup>  
He is, however, bound to follow the rules and regulations developed by the  
council pursuant to ACPA. <sup>30/</sup>

The promotion order will provide for an assessment to defray expenses,  
but this assessment may not exceed 1 percent of the market value of the  
year's production of participating producers. <sup>31/</sup> These fees will, whenever

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<sup>21/</sup> Minn. Stat. § 17.56(2) (1976).

<sup>22/</sup> Id.

<sup>23/</sup> Minn. Stat. § 17.56(3) (1976).

<sup>24/</sup> Minn. Stat. § 17.57 (1976).

<sup>25/</sup> Id.

<sup>26/</sup> Id.

<sup>27/</sup> Id.

<sup>28/</sup> Minn. Stat. § 17.58 (1976).

<sup>29/</sup> Id.

<sup>30/</sup> Id.

<sup>31/</sup> Minn. Stat. § 17.59(1) (1976).

possible, be deducted by the first purchaser <sup>32/</sup> at the time of the sale. <sup>33/</sup> The first purchaser will submit to the council through the Commissioner's office any fees so deducted once every 30 days. <sup>34/</sup> Unless proof of payment can be furnished, it will be necessary for a subsequent buyer to deduct the fee at time of purchase. <sup>35/</sup> If a promotion order is not issued, the petitioning producers will pay expenses incurred from a deposit advanced to the Commissioner for such purposes. <sup>36/</sup>

Council members are entitled to a reasonable per diem as fixed by the promotion order and actual expenses incurred in official business of the council. <sup>37/</sup> The council may appoint an attorney and fix compensation and terms of employment of such attorney. <sup>38/</sup> All records of the council are public records. <sup>39/</sup>

Any producer may have fees paid refunded to him. <sup>40/</sup> The request for refund must be submitted within 60 days following payment, but no more than 12 such requests will be honored in one year. <sup>41/</sup>

The council may suspend or terminate a marketing order effective at the expiration of the ten current marketing year if, after public hearings, it finds that the order does not effectuate its purposes. <sup>42/</sup> Producers can petition for a referendum to terminate the order, and it will be

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<sup>32/</sup> A "first purchaser" is a person who buys agricultural commodities for movement into commercial channels from the producer. The term also includes any lienholder, secured party or pledgee, public or private, or assignee of such lienholder, secured party or pledgee, who gains title from the producer as the result of exercising a legal right, regardless of when the lien, security interest, or pledge was created. Minn. Stat. § 17.53(6) (1976).

<sup>33/</sup> Minn. Stat. § 17.59(2) (1976).

<sup>34/</sup> Id.

<sup>35/</sup> Id.

<sup>36/</sup> Minn. Stat. § 17.59(3) (1976).

<sup>37/</sup> Minn. Stat. § 17.60 (1976). Per diem allowed cannot exceed \$35 per day. Minn. Stat. § 17.601 (1976).

<sup>38/</sup> Minn. Stat. § 17.61 (1976).

<sup>39/</sup> Minn. Stat. § 17.62 (1976).

<sup>40/</sup> Minn. Stat. § 17.63 (1976).

<sup>41/</sup> Id.

<sup>42/</sup> Minn. Stat. § 17.64 (1976).

terminated after the marketing year if a majority of the producers voting vote in favor of termination. <sup>43/</sup> Any surplus funds remaining after a termination, and after payment of legal obligations, will be expended for market research. <sup>44/</sup>

No activities of undertaken pursuant to ACPA is illegal or in restraint of trade. <sup>45/</sup> Any person who violates ACPA, or a rule or regulation promulgated thereunder, is guilty of a misdemeanor. <sup>46/</sup>

ACPA does not apply to producers of agricultural commodities subject to promotion orders established under any act effective on or before July 1, 1969, and specifically applicable to a particular commodity. <sup>47/</sup> No liability is imposed upon the State of Minnesota for any act or omissions of the Commissioner or any council established pursuant to ACPA. <sup>48/</sup>

a. Potato Promotion

The Potato Industry Promotion Act of Minnesota <sup>49/</sup> was passed prior to July 1, 1969, and thus ACPA does not apply to potato producers subject to a promotion order established under the potato promotion act. <sup>50/</sup> The potato promotion act is very similar to ACPA, except that it is specifically tailored to the promotion through research and advertising of Irish potatoes grown in the state of Minnesota. <sup>51/</sup>

To facilitate the administration of the Act, the state is divided into four districts. <sup>52/</sup> Separate referenda are required in each area. <sup>53/</sup>

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<sup>43/</sup> Id.

<sup>44/</sup> Minn. Stat. § 17.65 (1976).

<sup>45/</sup> Minn. Stat. § 17.66 (1976).

<sup>46/</sup> Minn. Stat. § 17.67 (1976).

<sup>47/</sup> Minn. Stat. § 17.68 (1976).

<sup>48/</sup> Minn. Stat. § 17.69 (1976).

<sup>49/</sup> Minn. Stat. § 30.461-.479 (1976).

<sup>50/</sup> See Minn. Stat. § 17.68 (1976).

<sup>51/</sup> Minn. Stat. § 30.462 (1976).

<sup>52/</sup> Minn. Stat. § 40.464 (1976). The statute lists which counties are included in each area.

<sup>53/</sup> Minn. Stat. § 30.464 (1976).

If approved by referendum, an area potato council is established in each area. 54/ The council is composed of the Commissioner of Agriculture or his representative (chairman with no right to vote), one processor representative, one wash plant representative, 55/ and five area growers. 56/ The grower representatives are elected for three year terms with two elected one year, two the following year, and one elected in the third year. 57/

The meeting provisions are similar to ACPA, and each council member receives \$25 per day together with travel expenses. 58/

The council in an area has the power to contract for research, education, publicity, promotion or transportation; to expend funds appropriated for its administration; to employ necessary personnel; to accept donations; and to investigate and prosecute in the name of the state of Minnesota any action to ensure payment of assessments, and to sue and be sued in the name of the council. 59/

Assessments at the rate of 2 cents per hundredweight is levied on all Irish potatoes grown or sold to a first handler 60/ in the state. 61/ The assessment is not imposed upon potatoes retained by growers to be used for seed or for their own consumption. 62/ The assessment is due upon any identifiable quantity of potatoes. 63/

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54/ Minn. Stat. § 30.465 (1976).

55/ These two are appointed by the Governor.

56/ Minn. Stat. § 30.465 (1976).

57/ Id.

58/ Minn. Stat. § 30.466 (1976).

59/ Minn. Stat. § 30.468 (1976).

60/ A "first handler" is a person who initially places into the channels of trade, or who is engaged in processing potatoes into food (except flour or starch). The sale of unharvested potatoes, or the delivery of potatoes from the farm of production to storage, packing shed or processing plant is not considered to be a first handler. Minn. Stat. § 30.463(6) (1976).

61/ Minn. Stat. § 30.469 (1976), as amended by Act of April 6, 1977, ch. 18, § 1, 1977 Minn. Sess. Law Serv. (West).

62/ Id.

63/ Id.



A first handler cannot sell nor ship potatoes until certified by the area council. <sup>64/</sup> Prior to such certification, he must furnish the council with certain information including its business name and place of business. <sup>65/</sup> The first handler collects the assessment charged by deducting the assessment from the purchase price. <sup>66/</sup> He must keep permanent records of purchases, sales, and shipments of raw potatoes, and he must report to the council each quarter. <sup>67/</sup>

Referenda are financed as under ACPA. <sup>68/</sup> As under that Act, growers may choose not to participate, and if they so choose, they are entitled to refunds. <sup>69/</sup> A referendum can be conducted among participating growers to consider raising or lowering the assessment. <sup>70/</sup>

Any person who violates the potato promotion act commits a misdemeanor. <sup>71/</sup> First handlers who fail to make collections or who falsify returns are liable to the council for the amount due plus a 6 percent penalty. <sup>72/</sup> All records of the council are public records. <sup>73/</sup>

b. Dairy Promotion

The Dairy Promotion Act of Minnesota <sup>74/</sup> was also effective before July 1, 1969, so that ACPA does not apply to dairy product producers subject to promotion orders established under the Dairy Promotion Act. <sup>75/</sup> The purpose of the Dairy Promotion Act is, of course, to promote milk products, and this is

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<sup>64/</sup> Minn. Stat. § 30.469(b) (1976), as amended.

<sup>65/</sup> Id.

<sup>66/</sup> Minn. Stat. § 30.469(c) (1976), as amended.

<sup>67/</sup> Minn. Stat. § 30.469(d) (1976), as amended.

<sup>68/</sup> See Minn. Stat. § 30.47 (1976).

<sup>69/</sup> See Minn. Stat. § 30.472 (1976), but see Minn. Stat. § 30.479 (1976).

<sup>70/</sup> See Minn. Stat. § 30.473 (1976).

<sup>71/</sup> Minn. Stat. § 30.475 (1976).

<sup>72/</sup> Minn. Stat. § 30.476 (1976).

<sup>73/</sup> Minn. Stat. § 30.477 (1976).

<sup>74/</sup> Minn. Stat. §§ 328.01-.13 (1976).

<sup>75/</sup> See Minn. Stat. § 17.68 (1976).

accomplished through creation of a Minnesota dairy association council. 76/

The structure of the Dairy Promotion Act is analagous to the ACPA. A council is elected upon petition of 1000 milk producers. The state is divided into 11 areas, and each area is entitled to two producer members. 77/ One producer member in each area is elected each year to serve a two year term. 78/

The council is responsible for formulating a promotion order establishing a program for research and development to promote the marketing of milk and milk products. 79/ The fee assessed by the order cannot exceed one percent of the market value of the product sold by the producer. 80/ A referendum is conducted on the final promotion order, and it becomes effective by majority vote. 81/

A council member receives a per diem up to \$25 per day plus actual expenses. 82/ The council and the Commissioner of Agriculture have powers and duties similar to those under ACPA and the potato promotion act. 83/ All records of the council are public records. 84/ A majority of the voting members of the council constitutes a quorum. 85/

The Commissioner may, after a public hearing, terminate or suspend a promotion order effective at the end of the then current calendar year. 86/ It can also be terminated by referendum. 87/

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76/ See Minn. Stat. § 32B.02 (1976).

77/ Minn. Stat. § 32B.04(1) (1976).

78/ Minn. Stat. § 32B.04(2) (1976).

79/ Minn. Stat. § 32B.04(4) (1976).

80/ Id.

81/ Id. A cooperative can vote on behalf of all producer members, or it can provide each of its members with a ballot with a return envelope addressed to the Commissioner of Agriculture.

82/ Minn. Stat. § 32B.04(5) (1976).

83/ See Minn. Stat. § 32B.04(5) (1976).

84/ Id.

85/ Minn. Stat. § 32B.05 (1976).

86/ Minn. Stat. § 32B.06 (1976).

87/ Id.

As with the other promotion acts, the producer may choose not to participate, and if he so chooses, he is entitled to a refund. <sup>88/</sup> The Act has criminal, nonliability of state, and acceptance of funds provisions similar to provisions in ACPA.

c. Turkey Promotion

The ACPA does not apply to turkey producers subject to promotion orders established pursuant to the turkey development program. <sup>89/</sup> The turkey development program is similar in most respects to ACPA.

Under this program, the state is divided into five regions, each of which is entitled to elect three members to the turkey research and promotion council. <sup>90/</sup> All terms are three years with one-third of the members being elected each year. <sup>91/</sup> The council formulates a promotion order. <sup>92/</sup> The maximum fee which can be set by this order is two cents per turkey over 10 pounds, eviscerated, or one cent per turkey under 10 pounds, eviscerated, sold by the producer or grower. <sup>93/</sup> The final promotion order must be approved by referendum, and it only becomes effective if at least 65 percent of the voters voting, and who have produced not less than 51 percent of the turkeys produced the preceding year, vote in favor of the order. <sup>94/</sup>

A council member does not receive a salary, but is entitled to actual expenses. <sup>95/</sup> The Commissioner and the council have powers and duties similar to those established under ACPA. <sup>96/</sup> A promotion order may be

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<sup>88/</sup> Minn. Stat. § 32B.09 (1976).

<sup>89/</sup> Minn. Stat. § 29.14-.19 (1976); see Minn. Stat. § 17.68 (1976). The turkey development program does not apply to wild turkeys raised on private game farms. Minn. Stat. § 29.19 (1976).

<sup>90/</sup> Minn. Stat. § 29.15(1) (1976).

<sup>91/</sup> Id.

<sup>92/</sup> Minn. Stat. § 29.15(3) (1976).

<sup>93/</sup> Id.

<sup>94/</sup> Id.

<sup>95/</sup> Minn. Stat. § 29.15(4) (1976).

<sup>96/</sup> See Minn. Stat. § 29.15(4) (1976).

terminated by the Commissioner, or upon petition of the producers. 97/  
Refunds are provided to producers who do not wish to participate. 98/

d. Soybeans Promotion

Soybeans are the final commodity the producers of which are not subject to the ACPA. 99/ The laws governing soybean promotion 100/ are similar to the ACPA.

The purpose of these laws is to promote soybeans through research and advertising, and this is accomplished by establishment of a Minnesota soybean research and promotion council. 101/ Creation of such a council requires a petition of 500 soybean growers, followed by an election. 102/ The state is divided into the same districts as used for crop reporting by the State-Federal Crop and Livestock Reporting Service, and the number of members each district elects to the council depends upon the soybean average within that district. 103/ Except for initial members, each member is elected to a three year term. 104/

Promptly after election, the council must promulgate a promotion order. 105/ The fee established therein cannot be less than  $\frac{1}{2}$  cent per bushel upon all soybeans grown in the state and sold in commercial channels. 106/ The maximum assessment rate cannot exceed  $\frac{1}{2}$  percent of the market value of the year's production of all participating producers. 107/ Increases to the assessment

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- 97/ Minn. Stat. § 29.16 (1976).  
98/ Minn. Stat. § 29.18 (1976).  
99/ See Minn. Stat. § 17.68 (1976).  
100/ Minn. Stat. § Minn. Stat. § 21A.01-.19 (1976).  
101/ Minn. Stat. § 21A.01 (1976), as amended by act of April 20, 1977,  
ch. 28, § 1, 1977 Minn. Sess. Law Serv. (West).  
102/ Minn. Stat. § 21A.03 (1976).  
103/ Id.  
104/ Minn. Stat. § 21A.04 (1976), as amended by Act of April 20, 1977,  
ch. 28, § 2, 1977 Minn. Sess. Law Serv. (West).  
105/ Minn. Stat. § 21A.06 (1976), as amended by Act of April 20, 1977,  
ch. 28, § 4, 1977 Minn. Sess. Law Serv. (West).  
106/ Id.  
107/ Id.

must be approved by the producers can not be more than  $\frac{1}{2}$  cent per bushel annually. 108/

Fees are deducted by the first purchaser 109/ at the time of sale except that occasional sales between growers are exempt. 110/ These fees cannot be used to support a political party or a candidate for public office. 111/

council members do not receive a salary, but they do receive per diem up to \$35 per day plus actual expenses. 112/

The Commissioner and the council have powers and duties similar to those under the ACPA. 113/ As with the other promotion acts, a majority of the voting members of the council constitutes a quorum. 114/ All council records are public. 115/ Violators of chapter 21 provisions commit a misdemeanor. 116/ The promotion order may be terminated or suspended by the Commissioner or by referendum. 117/ Refund and nonliability of the state provisions are also similar to the ACPA. 118/

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108/ Id.

109/ A "first producer" is a person who buys soybeans from the grower in the first instance, or a lienholder or secured party. Minn. Stat. § 21A.02 (6) (1976).

110/ Minn. Stat. § 21A.07(1) (1976).

111/ Minn. Stat. § 21A.09(2) (1976), as amended.

112/ Minn. Stat. § 21A.10 (1976).

113/ See Minn. Stat. §§ 21A.11, .115, .12 (1976), as amended.

114/ Minn. Stat. § 21A.13 (1976).

115/ Minn. Stat. § 21A.14 (1976), as amended.

116/ Minn. Stat. 21A.15 (1976), as amended.

117/ Minn. Stat. § 21A.16 (1976), as amended.

118/ See Minn. Stat § 21A.17, .19 (1976), as amended.

#### 4. Public and City Markets

##### a. Sale of Farm Products

The Minnesota Constitution provides that any person may sell or peddle the product of a farm or garden cultivated and occupied by him without obtaining a license. <sup>1/</sup> This article covers products of animals actually raised on the farm or kept on the farm for a considerable length of time. <sup>2/</sup> The state's highest court has held invalid a license ordinance applicable to transient merchants selling natural products of a farm because "a distinction between those who grow and those who do not grow the product which they sell is, when the purpose is to regulate selling from house to house, unreasonable and arbitrary."<sup>3/</sup>

This provision of the Constitution does not prevent a city from enacting reasonable rules governing those who sell and how much regulation is allowed is a question of fact. <sup>4/</sup> For example, a village may adopt an ordinance prohibiting the sale of fruits and vegetables on village streets without a license. <sup>5/</sup> And an ordinance forbidding the sale of unpasteurized milk, regulating the packaging and distribution thereof and forbidding the adulteration or misbranding of milk or cream offered for sale did not violate the Constitution. <sup>6/</sup>

A city council may establish markets, regulate them by ordinance, and restrain sales in the streets. <sup>7/</sup> An ordinance, however, which prohibits

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<sup>1/</sup> Minn. Const. art. 13, § 7, (1976).

<sup>2/</sup> Op. Atty. Gen., 290-J-9, December 27, 1932.

<sup>3/</sup> State v. Pehrson, 205 Minn. 573, 287 N.W. 313 (1939); see Minn. Const. art. 1, § 18 (1857).

<sup>4/</sup> Op. Atty. Gen., 290-J-9, October 7, 1939.

<sup>5/</sup> Op. Atty. Gen., 477-B-2, June 9, 1937.

<sup>6/</sup> Op. Atty. Gen., 292-E, May 14, 1942.

<sup>7/</sup> Minn. Stat. § 412.221(10) (1976).

persons from negotiating sales of commodities outside of the designated market and on the streets of the village would be invalid. 8/

b. Public Markets

A public market is a domestic corporation that is a chamber of commerce, board of trade, or exchange that maintains or operates a regular place of business or trading room for members only in which the members buy, sell, or exchange grain, livestock, or other farm products for themselves and for others. 9/ Under state law, it may be organized as a nonprofit corporation. 10/ A public market is exempt from taxation. 11/

Membership in a public market is open to any person, association, or corporation having a method of operation that does not conflict with any reasonable rule of public market that desires to deal or trade in the commodities usually dealt in on the public market. 12/ Application for membership is made in a manner provided by articles or bylaws of the public market. 13/

A public market may make reasonable rules, regulations, and bylaws, including provisions for membership fees and uniform reasonable assessments. 14/ Members of the market must comply with reasonable rules established by the market. 15/ A rule is unreasonable if it modifies a provision in the articles, constitution, or bylaws of an association or corporation governing

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8/ Op. Atty. Gen., No. 68, p. 91, 1922.

9/ Minn. Stat. § 317.64(3) (1976).

10/ Minn. Stat. § 317.64 (1976).

11/ Minn. Stat. § 272.02 (1976). But a building credited by a private corporation on its own land for a city market, and with a 25 year franchise from the city, is not exempt. State v. Cooley, 62 Minn. 183, 64 N.W. 379 (1895).

12/ Minn. Stat. § 317.64(5) (1976).

13/ Id.

14/ Minn. Stat. § 317.64(6) (1976).

15/ Id.

the distribution of profits to the stockholders or members of the association or corporation. 16/

A public market is a monopoly in restraint of trade when it: (1) wrongfully or unreasonably refuses to admit or dealys the admi-sion of an applicant, or (2) discriminates, or cause another to discriminate, among mebers. 17/ When a public market is a monopoly in restraint of trade, all trading therein is prohibited, and the Attorney General must bring an action to terminate its corporate existence, or sue to enjoin further operation or further violations. 18/

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16/ Id.

17/ Minn. Stat. § 317.64(7) (1976).

18/ Minn. Stat. § 317.64(8) (1976).



## B. Trade Regulation

The economic system currently functioning in this country is referred to as free enterprise. Under what economists would refer to as ideal conditions within this type of system, the law of supply and demand keeps the system in equilibrium and is responsible for the eventual allocation of scarce resources. Food is one of the scarcest and most essential of resources. Since ideal economic conditions do not exist, government regulation is one of the means utilized in an attempt to achieve the allocation of food considered most desirable.

Most trade regulation, and hence regulation of the food industry, is pursued by the federal government. Some regulation, varying tremendously in enforcement from state to state, carried on by the various states. The laws discussed in section A, immediately preceding, involve state regulation of food marketing. The laws discussed in this section relate more directly to trade practices and less directly to marketing. The law discussed is, of course, limited to Minnesota state law.

For a discussion of trade practice exemptions for cooperatives, see Chapter V, section C.

### 1. Unfair Discrimination and Competition

It is unlawful to discriminate between different sections within the state by selling a commodity at a lower price in one section than in another section. <sup>1/</sup> The seller can, of course, make allowances for differences in quality and account for distance from the point of production or manufacture

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<sup>1/</sup> Minn. Stat. § 325.03 (1976). To violate this law, the seller must have the purpose of injuring competition, or the sale must have that effect. Id.

to the point of distribution. <sup>2/</sup> Also, the seller is not prevented by the statute from making a good faith effort to meet local competition. <sup>3/</sup> This prohibition against discrimination in selling is applicable to any scheme which in substance or in fact violates the spirit of the law. <sup>4/</sup>

This section of the law is applicable to the manufacture, production, or distribution of any commodity or good. <sup>5/</sup> Because of its broad application, it is applicable to almost everyone involved in agriculture and/or the food industry. Commodity is defined, for the purposes of this law, as any subject of commerce. <sup>6/</sup> This definition certainly includes agricultural products.

Manufacturers and producers are defined to include creameries, canneries, and other processors of agricultural products. <sup>7/</sup> A producer also includes a grower, baker, maker, manufacturer, bottler, packer, converter, processor, or publisher. <sup>8/</sup>

An earlier version of this law was held to be constitutional. <sup>9/</sup> Similar legislation has also been upheld. <sup>10/</sup> In addition to the above, retailers, wholesalers, and vending machine operators are prohibited from selling below cost if the intent or effect of such is injurious to competition. <sup>11/</sup>

Different provisions of this state's laws apply to discrimination in purchasing. For example, § 17.15 <sup>12/</sup> prohibits a person in the business of buying farm products from discriminating between different sections of the

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<sup>2/</sup> Minn. Stat. § 325.03 (1976).

<sup>3/</sup> Id.

<sup>4/</sup> Id.

<sup>5/</sup> Minn. Stat. § 325.02 (1976).

<sup>6/</sup> Minn. Stat. § 325.01(8) (1976).

<sup>7/</sup> Minn. Stat. § 325.01(4) (1976).

<sup>8/</sup> Minn. Stat. § 325.01(9) (1976).

<sup>9/</sup> Great Atlantic and Pacific Tea Co. v. Ervin, 23 F. Supp. (D. D.C. 1938).

<sup>10/</sup> E.g., Central Lumber Co. v. South Dakota, 226 U.S. 157 (1912); Wholesale Tobacco Dealers Bureau v. National Candy & Tobacco Co., 11 C. 2d 634, (82 P.2d 3 (Cal. 1938).

<sup>11/</sup> Minn. Stat. § 325.04 (1976).

<sup>12/</sup> Minn. Stat. § 17.15 (1976).

state, or persons in the same section, by purchasing at a higher price in one locality or from one person than is paid for similar quality products in another section or to another person. Due allowance is permitted for the reasonable cost of transportation from locality of purchase to locality of manufacture or resale. <sup>13/</sup> Section 17.15 also prohibits the failure to deduct transportation or hauling costs from the purchase price or the exchange of goods of higher value than the cash price paid for such products. <sup>14/</sup> But it is not unfair competition to meet a price actually paid on the same day by a bona fide competitor. <sup>15/</sup>

It has been held that this section of the law is not unconstitutional for want of due process because it omits the element of intent to destroy competition. <sup>16/</sup> Purchasers are not required to follow this statute when dealing with out-of-state producers. <sup>17/</sup> The refusal of an egg wholesaler to pay merchants as high a price as he paid farmers is not, in the opinion of the Attorney General, a violation of this law. <sup>18/</sup>

Another separate provision of the law prohibits discrimination in the purchase of milk, cream, or butterfat; <sup>19/</sup> and yet another prohibits discrimination in the purchase of grain. <sup>20/</sup> In light of §§ 17.15 and 325.03, these two sections appear to be cumulative and probably unnecessary.

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<sup>13/</sup> Id.

<sup>14/</sup> Id. A transportation charge of 2¢ per pound for butterfat and 15¢ per 100 pounds for milk is considered to be in compliance with the law. Id.

<sup>15/</sup> Minn. Stat. § 17.15 (1976). The burden of showing good faith is on the defendant. Id.

<sup>16/</sup> State v. Lanesboro Produce and Hatchery Co., 221 Minn. 246, 21 N.W. 2d 792 (1946). See Note 1, supra.

<sup>17/</sup> Op. Atty. Gen., 135-A-3, November 19, 1952.

<sup>18/</sup> Op. Atty. Gen., 135-A-3, August 26, 1935.

<sup>19/</sup> Minn. Stat. § 32.11 (1976).

<sup>20/</sup> Minn. Stat. § 235.10 (1976).

## 2. Deceptive Trade Practices

The Uniform Deceptive Trade Practices Act <sup>1/</sup> does not contain an exemption for agriculture, nor for any other division of the food industry. This act outlaws such activities as passing off goods as those of another; causing confusion as to the source, sponsorship, approval, or certification of goods; using deceptive representations or designations of geographic origin; representing goods to be of one quality when they are of another; and other similar type activities. <sup>2/</sup>

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<sup>1/</sup> Minn. Stat. §§ 325.771-.776 (1976).

<sup>2/</sup> Minn. Stat. § 325.772 (1976).

### 3. Combinations in Restraint of Trade

Both constitutionally and by statute, combinations of persons, either individually or as members of a corporation, to monopolize markets for food products, or to interfere with the freedom of such markets, are considered to constitute a criminal conspiracy. <sup>1/</sup> In addition, the Minnesota Antitrust Law <sup>2/</sup> makes combinations in restraint of trade unlawful. <sup>3/</sup>

The Minnesota Antitrust Law does not forbid the existence of agricultural or horticultural organizations instituted for purposes of mutual help and not conducted for profit. <sup>4/</sup> Such organizations are not considered illegal combinations in restraint of trade. <sup>5/</sup>

The Minnesota Antitrust Law applies to any contract or conspiracy entered into in this state and to any contract or conspiracy which affects commerce in this state. <sup>6/</sup> Activities which are considered to be in restraint of trade, and hence unlawful, include combinations for the purpose of (a) fixing or affecting prices or fees, (b) fixing or controlling supply of a commodity for the purpose of affecting prices, (c) allocating or dividing up markets, (d) affecting competition in the letting of public bids, or (e) refusing to deal with another person. <sup>7/</sup> Other restraints on trade include excluding a person from a business transaction on the basis of that person's sex, race, color, religion, ancestry or national origin; to give statements or

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<sup>1/</sup> Minn. Const. art. 13, § 6 (1974); Minn. Stat. § 325.83 (1976).

<sup>2/</sup> Minn. Stat. §§ 325.8011-.8028 (1976).

<sup>3/</sup> Minn. Stat. § 325.8013 (1976).

<sup>4/</sup> Minn. Stat. § 325.8017 (1976).

<sup>5/</sup> Id.

<sup>6/</sup> Minn. Stat. § 325.8016 (1976).

<sup>7/</sup> Minn. Stat. § 325.8015 (1976).

documents that you have complied with the policy imposed by another to discriminate on the basis of any of the above; or to process a letter of credit or other document which contains a provision requiring discrimination. 8/

A violation of the Minnesota Antitrust Law can result in civil damages of up to \$50,000 (or \$100,000 if it involves failure to comply with a final judgment), 9/ a criminal fine of up to \$50,000, 10/ and/or injunctive relief. 11/ It can also result in forfeiture of charter rights and the privilege of doing business. 12/ The statute of limitations on a cause of action under this law is four years from the date upon which the cause of action arose. 13/

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8/ Id. There are certain statutory exceptions.  
9/ Minn. Stat. § 325.8018(1) (1976).  
10/ Minn. Stat. § 325.8018(2) (1976).  
11/ Minn. Stat. § 325.8020 (1976).  
12/ Minn. Stat. § 325.8022 (1976).  
13/ Minn. Stat. § 325.8026 (1976).

#### 4. False Statement in Advertisement

It is unlawful, in attempting to sell or dispose of an item or to increase the consumption of such item, to make a statement in an advertisement which is untrue, deceptive, or misleading. <sup>1/</sup> Such action constitutes a misdemeanor and is considered to be a public nuisance. <sup>2/</sup> There is no exemption from, or exception to, this statute.

The elements essential to constitute a violation of this section are intent, publication, and false or misleading advertising. <sup>3/</sup> The use of a container which is larger than necessary to contain merchandise which is offered for sale by a competitive manufacturer does not per se constitute a violation. <sup>4/</sup> Also, the section does not prevent extravagant use of high-sounding language. <sup>5/</sup>

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<sup>1/</sup> Minn. Stat. § 325.905 (1976).

<sup>2/</sup> Id.

<sup>3/</sup> Op. Atty. Gen., 417-e, October 3, 1951.

<sup>4/</sup> Id.

<sup>5/</sup> Op. Atty. Gen., 417-E, September 24, 1948.

5. Fair Trade Act

The Minnesota Fair Trade Act <sup>1/</sup> provides that when a commodity bears the trademark or name of a producer or distributor and that commodity is in free and open competition with similar commodities, certain provisions in a contract between the seller and buyer of such product are not considered unlawful. <sup>2/</sup> These provisions are:

1. that the buyer will not resell such commodity at less than the minimum price set by the seller,
2. that the buyer will require of any dealer to whom he resells such commodity an agreement that resale of such item will not be at less than the minimum price set by the first seller,
3. that the seller will not sell such commodity to any wholesaler unless such wholesalers agrees not to sell except as provided in (1) and (2) above, and
4. that the seller will not sell to any retailer unless the retailer agrees not to resell at less than the stipulated minimum price. <sup>3/</sup>

These contractual provisions are available to buyers and sellers of agricultural and food commodities.

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<sup>1/</sup> Minn. Stat. §§ 325.08-.14 (1976).

<sup>2/</sup> See Minn. Stat. § 325.08 (1976).

<sup>3/</sup> Minn. Stat. § 325.08 (1976).



## 6. Unlawful Trade Practices

In addition to the Uniform Deceptive Trade Practices Act and the prohibition against false advertising discussed above, Minnesota law also makes unlawful certain other trade practices. For example, it is unlawful to represent a sale as wholesale unless the sale is made to a transferee for resale or is a sale of a substantial quantity of merchandise for business use only. <sup>1/</sup> No person can, in connection with the sale of merchandise, knowingly misrepresent the true quality, ingredients, or origin of such merchandise. <sup>2/</sup>

No employer can sell merchandise not handled in the regular course of his business to his employees, or to any other person. <sup>3/</sup> This statute contains exceptions for items required for the employees' safety and health, candy, chewing gum, tobacco, and for meals consumed on the employer's premises. <sup>4/</sup> It does not prohibit the sale by an employer to his employees of his own products or property at any price. <sup>5/</sup>

In addition to the above, there are provisions which prevent the retailer from misrepresenting the nature of his business. <sup>6/</sup>

The prohibitions in this particular set of laws use terms such as "retailer" and "merchandise." Because of this, it is not clear to what extent the laws are applicable to commodities and producers. There are, however, no specific exceptions relating to farmers or to food related industry.

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<sup>1/</sup> Minn. Stat. § 325.143 (1976).

<sup>2/</sup> Minn. Stat. § 325.145 (1976). Note the similarity here with the Uniform Deceptive Trade Practices Act, supra.

<sup>3/</sup> Minn. Stat. § 325.146 (1976).

<sup>4/</sup> Id.

<sup>5/</sup> Minn. Stat. § 325.148 (1976).

<sup>6/</sup> Minn. Stat. § 325.144 (1976).

## 7. Unfair Dairy Trade Practices Act

The purposes of the Unfair Dairy Trade Practices Act <sup>1/</sup> are to eliminate certain trade practices which destroy competition of persons dealing in "selected dairy products," <sup>2/</sup> to prevent disturbances which impair the supply of dairy products; to bring stability and prosperity to the production and marketing of such products; to assure the producer of a reasonable return; and to eliminate discriminatory practices against retailers. <sup>3/</sup>

For manufacturers, processors, and distributors of selected dairy products the following methods of doing business are considered unfair practices: <sup>4/</sup>

1. Owning or controlling more than 5 percent of a retail business which sells selected dairy products unless the business name, address, and extent of ownership or control is prominently displayed at the main public entrance in type not less than 24-point Gothic capitals.
2. Purchasing real or personal property from a retailer and leasing back or reselling such property to the retailer under a deferred payment contract unless certain requirements are fulfilled. No such lease or resale agreement may contain any requirements that the retailer shall purchase any selected dairy products from a specific person or company.

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<sup>1/</sup> Minn. Stat. § 32A.01-.09 (1976). The Act is administered by the Department of Agriculture. Minn. Stat. § 32A.05(1) (1976). The Secretary of Agriculture's enforcement and administrative powers are spelled out in Minn. Stat. § 32A.05(3) (1976).

<sup>2/</sup> "Selected dairy products" means milk for human consumption in fluid form, fluid milk products, certain frozen foods (§ 32.55), cottage cheese and ice cream and ice milk mix. See Minn. Stat. § 32A.03(2) (1976).

<sup>3/</sup> Minn. Stat. § 32A.02 (1976).

<sup>4/</sup> Minn. Stat. § 32A.04 (1976).

3. Giving anything of value as an inducement to the recipient to purchaser-handler store, display, sell or trade in any selected dairy product of any manufacturer, wholesaler, or distributor.
4. Helping to defray the cost of a retailer for any type of display, or building such display, when such display contains a reference to a retailer.
5. Financially assisting a retailer in obtaining a license.
6. Becoming bound for the repayment of any loan or the fulfillment of any financial obligation of any retailer.
7. Extending credit to a retailer for more than 15 days after the end of the month of delivery of selected dairy products.
8. Furnishing or maintaining inside signs of a permanent nature unless they are used only for advertising a selected dairy product manufactured, distributed, or sold by the person furnishing the sign, or food items made principally from a selected dairy product. It is not improper to furnish point of sale advertising material made of paper to a retailer free of charge for the sole purpose of promoting the sale of a selected dairy product of the person furnishing the material.
9. Contributing to or participating in cooperative advertising using newspapers, radio, television, or other media if the retailer is identified in the advertisement. The manufacturer, wholesaler, or distributor may pay the cost of advertising one of its selected dairy products when the ad is put out by the retailer if no reference is made to the retailer.

10. Giving anything of value to a retailer for the privilege of placing a sign upon the premises of the retailer, or for displaying any selected dairy product in connection with its promotion. 5/
11. Crediting the account of or paying a retailer for a selected dairy product which the retailer claims to have become stale, spoiled, or otherwise unsaleable when the product is not in fact spoiled or unsaleable.
12. Giving or offering to give a gift of money, merchandise, trading stamps, coupons, service, supplies, or anything else of value, or offering a rebate, discount or advertising allowance not expressly permitted by the Act.
13. Charging a combined prices for a selected dairy product together with another commodity or service which is less than the aggregate price of such products when sold separately.
14. Engaging in the business of hauling, handling, or delivering selected dairy products to a retailer with the result that the retailer pays less for the product than the price he could legally obtain from the wholesaler, manufacturer, or retailer.
15. Offering to sell a selected dairy product below cost, 6/ or giving it away. 7/

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5/ The manufacturer, wholesaler, or distributor may maintain an insulated truck body used exclusively in the sale and delivery of its selected dairy products by the retailer. Minn. Stat. § 32A.04(1)(j) (1976).

6/ "Cost" is defined in Minn. Stat. § 325.01 (1976).

7/ This prohibition also applies to retailers. Minn. Stat. § 32A.04(1)(o) (1976).

It is both unlawful and an unfair trade practice for a retailer to knowingly receive a benefit from an act which is prohibited by this Act. 8/

In addition to the above, the manufacturer, wholesaler, or distributor of selected dairy products is prohibited from selling furniture, trade fixtures, and equipment to a retailer purchasing from him at less than cost. 9/ A sale at less than 15 percent above the seller's actual current invoice or replacement cost (less depreciation if used) is considered to be a sale below "cost." The buyer of trade fixtures or equipment who purchases such from a manufacturer, wholesaler or distributor providing him with selected dairy products must pay the full price within 40 days or pay at least 10 percent within the 40 days and secure the remaining debt. 10/ The servicing of all items of this nature sold a retailer by a manufacturer, wholesaler, or distributor must, unless certain conditions are met, be performed by the purchaser. 11/

Nothing in the Act prohibits a manufacturer, wholesaler, or distributor from placing his refrigeration or storage facilities on a retailer's premises without payment as long as the facilities are used only for the selected dairy products of the manufacturer, wholesaler, or distributor, and they are not used by the retailer to sell any of the product stored therein. 12/

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8/ Minn. Stat. § 32A.04(2) (1976).

9/ Minn. Stat. § 32A.07(a) (1976).

10/ In such a situation, the conditional sales contract or chattel mortgage must specify (1) the cash payment or trade-in made, but the value of the trade-in cannot exceed the depreciated value of this item, and (2) that the amount of the unpaid purchase price will be paid in 60 equal monthly installments. A minimum rate of interest is also set. See Minn. Stat. § 32A.07(a) (1976).

11/ Minn. Stat. § 32A.07(b) (1976).

12/ Minn. Stat. § 32A.08(2) (1976).

To pay for the administration and enforcement of this Act, each first manufactures subject to it must pay the Commissioner of Agriculture a fee. <sup>13/</sup>

Any person injured by a violation of this Act is entitled to sue for triple the damages he has sustained, costs of the suit and reasonable attorney's fees. <sup>14/</sup> Injunctive relief can be obtained without proof of actual damages or that an adequate remedy at law does not exist. <sup>15/</sup> No violation of the Act is, however, a crime. <sup>16/</sup>

If the Commissioner believes that the Act is being violated, he may conduct a hearing and, if it is found that a violation has occurred, issue an order requiring the violator to cease and desist from such violation. <sup>17/</sup> Such an order is reviewable in district court, and violations of such an order can be punished by the district court. <sup>18/</sup> The Commissioner can also impose a penalty, after a due process hearing, on violators of the Act. <sup>19/</sup>

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<sup>13/</sup> Minn. Stat. § 32A.05(4) (1976). The maximum fees are set by this statute. It also establishes the time within which the fees must be paid and provides for a penalty for late payment.

<sup>14/</sup> Minn. Stat. § 32A.09(1) (1976).

<sup>15/</sup> Id.

<sup>16/</sup> Minn. Stat. § 32A.09(3) (1976)

<sup>17/</sup> Minn. Stat. § 32A.09(5) (1976).

<sup>18/</sup> Id.

<sup>19/</sup> Minn. Stat. § 32A.09(6) (1976). The penalty is considered civil and not criminal.

## VII. Food Law

This chapter addresses a broad range of law relating to the regulation of the food industry in Minnesota. The topics covered include: (A) the Minnesota Food Law, (B) Meat, (C) Eggs, (D) Vegetables and Fruits, (E) Dairy Products, (F) Beverages, (G) The Safe Drinking Water Act, (H) Licensing, (I) Community Health Services Act, (J) Containers, (K) Wholesale Produce Dealers, (L) Cold Storage, and (M) Other Food Law. The reader should refer to the Table of Contents for a more detailed break down of these general subject areas.

Much of the food law regulation is performed by the federal government. This outline is, of course, limited to Minnesota law. No attempt is made to characterize the extent to which the State of Minnesota enforces its laws, and there is very little comparison of state and federal law.

## A. Minnesota Food Law

Chapter 31 of the Minnesota Statutes is the Minnesota Food Law. <sup>1/</sup>  
This section discusses chapter 31 except for those provisions of that chapter which deal with meat regulation. The meat regulation provisions are discussed in section B, infra.

The objective of the Minnesota Food Law is to achieve and maintain uniformity with the federal government--the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 301 et seq--and with other states in the regulation and control of the manufacture, distribution, and sale of food. <sup>2/</sup> To accomplish this objective, many of the federal regulations have been adopted as state regulations. <sup>3/</sup>

### 1. Basic Regulatory Laws

It is unlawful to adulterate or misbrand food; to manufacture, sell or deliver adulterated or misbranded food; or to receive in commerce adulterated or misbranded food, and then deliver it, or offer to deliver it. <sup>4/</sup> Food is considered adulterated if it contains any poisonous or deleterious substance which may render it injurious to health; if it contains an additive or chemical which makes it unsafe; if it is diseased, filthy, decomposed, or

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<sup>1/</sup> Minn. Stat. § 31.001 (1976). "Food" is defined in the Law as "articles used for food or drink for man or other animals, chewing gum, and articles used for components of such articles. Minn. Stat. § 31.03(3) (1976).

<sup>2/</sup> Minn. Stat. § 31.002 (1976).

<sup>3/</sup> See, e.g., Minn. Stat. § 31.101 (1976).

<sup>4/</sup> Minn. Stat. § 31.02(a), (b), (c) (1976).



otherwise unfit for food; if it is handled in unsanitary conditions; if it is the product of a diseased animal; if its container is composed of a poisonous or deleterious substance; if it has been intentionally subjected to radiation not in conformity with regulations; if any valuable constituent part has been omitted or substituted; if damage has been concealed; if any substance has been added to increase bulk or weight or make it appear better than it is; if it is a confectionary and is imbedded in a nonnutritive object, <sup>5/</sup> contains alcohol other than  $\frac{1}{2}$  of one percent by volume derived from flavoring extracts or contains nonnutritive substance; <sup>6/</sup> if it contains a color additive <sup>7/</sup> which is unsafe; or if it is margarine or butter and the raw material used was filthy, or it is otherwise unfit for food. <sup>8/</sup>

Food is deemed misbranded if its label is false or misleading; if it is offered for sale under the name of another food; in certain circumstances, if it is an imitation of another food; if its container is made, formed, or filled as to be misleading; if in package form and the label does not contain the name and place of business of the manufacturer, packer, or distributor, and an accurate statement of net quantity; if information required under the Minnesota Food Law is not prominently placed such that it is likely to be read and understood; if it purports to be a food for which a definition

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<sup>5/</sup> This clause does not apply to a nonnutritive object if it is of practical functional value and would not render the product hazardous to health. Minn. Stat. § 31.121(n) (1976).

<sup>6/</sup> Id.

<sup>7/</sup> "Color additive" is defined in Minn. Stat. § 31.01(31) (1976).

<sup>8/</sup> Minn. Stat. § 31.121 (1976).

and standard of identity have been prescribed by regulation (Minnesota standards of identity, quality, and fill of container are the same as the federal standards. See Minn. Stat. § 31.102.) and it does not conform to such; if it purports to be a food for which a standard of quality has been prescribed and it falls below that quality (unless its label bears a statement that it falls below); if it purports to be a food for which a standard of fill of container has been prescribed and it falls below the standards; if it is not a food for which a standard of identity has been prescribed and it does not bear a label clearly giving the common or usual name of the food; if it purports to be for special dietary use and the label does not bear information concerning its dietary properties; if it contains any artificial flavoring, artificial coloring, or chemical preservative and the label does not state this fact (does not apply to butter, cheese, or ice cream); if it is a raw agricultural commodity <sup>9/</sup> containing a pesticide chemical applied after harvest unless the label declares the presence of such; if it is a product intended as an ingredient in another food and when used will result in the final product being adulterated or misbranded; or if it is a color additive and the label is not in conformity with that prescribed by federal law. <sup>10/</sup>

In addition to adulteration or misbranding, other prohibited acts include: <sup>11/</sup>

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<sup>9/</sup> A "raw agricultural commodity" is "any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing." Minn. Stat. § 31.01(29) (1976).

<sup>10/</sup> Minn. Stat. § 31.123 (1976).

<sup>11/</sup> Minn. Stat. § 31.02(d)-(1) (1976).

1. distribution of a mislabelled consumer commodity 12/ by a person engaged in packaging or labelling such commodities;
2. offering for sale an article in violation of the emergency permit control prohibition; 13/
3. dissemination of any false advertisement; 14/
4. refusing to permit entry or inspection or the taking of a sample, or to permit access to or copying of any record, any of which is authorized; 15/
5. giving a false guarantee; 16/
6. removing or disposing of detained or embargoes articles; 17/
7. altering or destroying labels of food products;
8. forging or falsely representing any mark, stamp, tag or lable required by regulation; or
9. using or revealing information acquired under the Minnesota Food Law concerning a method or process which as a trade secret is entitled to protection.

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12/ A "consumer commodity" is a food and, in general terms, does not include tobacco, chemical compounds, vaccines, drugs, beverages, or seeds. Minn. Stat. § 31.01(20) (1976).

13/ See Minn. Stat. § 31.131 (1976). This section allows the Commissioner to impose temporary restrictions on the manufacture, distribution, or sale of any class of food which may, by reason of contamination with microorganisms, be injurious to health. The restrictions are enforced by the use of a permit system.

14/ An "advertisement" is any representation disseminated in a manner which is likely to induce the purchase of food. Minn. Stat. § 31.01(26) (1976). It is deemed to be false if it is false or misleading in any particular. Minn. Stat. § 31.124 (1976). See note 22 and accompanying text, *infra*.

15/ The authorization is contained in Minn. Stat. § 31.04 (1976).

16/ Except that a person who relies in good faith on a guarantee or understanding to the same effect as the one given, and which is signed by and gives the name and address of a person residing in Minnesota does not violate the law. See Minn. Stat. §§ 31.02(h), .032(2) (1976).

17/ The Commissioner has the authority to embargo any food when there is probable cause to believe that it is adulterated or so misbranded as to be dangerous or fraudulent. If the embargoes cargo is found to be misbranded, the agent may petition in district court to have it condemned. If a perishable food item is found to be unsafe, it is considered a nuisance, the Commissioner may condemn or destroy it. See Minn. Stat. § 31.05 (1976). He also has the power to render certain food unsafe. Minn. Stat. § 31.09 (1976).

All labels of consumer commodities must conform with the requirements for the declaration of net quantity of contents of section 4 of The Fair Packaging and Labelling Act. <sup>18/</sup> Any label of a consumer commodity which bears a representation as to the number of servings of such commodity must bear a statement of the net quantity of each such serving. <sup>19/</sup> The Commissioner is empowered to pass regulations establishing standards for the characterization, e.g., large, family size, of a package enclosing a consumer commodity; regulating the placement upon the package of any representation that the commodity is offered for sale at a price lower than ordinary, or that a price advantage is accorded the purchaser by reason of the size of the package; requiring that the label on each package bear the common name of such consumer commodity and the common name of ingredients in order of decreasing prominence; or to prevent "slack-fill" of packages containing consumer commodities. <sup>20/</sup>

Food which is to be processed, labeled or repacked at establishments other than those where originally processed or packed is exempt from any labelling requirement. <sup>21/</sup>

In determining whether a label (or an advertisement) is misleading, there must be taken into account not only representations made or suggested but the extent to which the labelling fails to reveal material facts. <sup>22/</sup>

The Commissioner has broad powers to inspect and regulate food in transit in the state. <sup>23/</sup>

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<sup>18/</sup> Minn. Stat. § 31.103(1) (1976); see 15 U.S.C. § 1451 et seq. No qualifying words or phrases may appear with the separate statement of net quantity. Minn. Stat. § 31.103(3) (1976).

<sup>19/</sup> Minn. Stat. § 31.103(2) (1976).

<sup>20/</sup> Minn. Stat. § 31.103(4) (1976).

<sup>21/</sup> Minn. Stat. § 31.104 (1976).

<sup>22/</sup> Minn. Stat. § 31.021 (1976). See note 14, *supra*.

<sup>23/</sup> See Minn. Stat. §§ 31.08, .102(2) (1976).

It is unlawful to operate any establishment which handles food if such establishment is filthy, unclean, or unsanitary. <sup>24/</sup> If an establishment is found operating in violation of this law, the Commissioner will give him written notice to clean the place up within a reasonable time. <sup>25/</sup> It is also unlawful for a diseased person to work in an establishment where food is handled if his condition is such that the disease may be spread. <sup>26/</sup>

There are a number of different legal consequences which may result from a violation of the Minnesota Food Law. The Commissioner may petition in district court for a restraining order or injunction for any of the acts prohibited by § 31.02. <sup>27/</sup> A person who violates § 31.02 is guilty of a misdemeanor and may be prosecuted as such. <sup>28/</sup> But the medium which disseminates an advertisement is not liable if it is false. <sup>29/</sup> County and city attorneys to whom the Commissioner reports a violation have a duty to cause appropriate proceedings to be instituted without delay. <sup>30/</sup> Additionally, no action can be maintained for the purchase price of food the sale of which is prohibited. <sup>31/</sup>

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<sup>24/</sup> Minn. Stat. § 31.161 (1976).

<sup>25/</sup> Minn. Stat. § 31.165 (1976).

<sup>26/</sup> Minn. Stat. § 31.171 (1976).

<sup>27/</sup> Minn. Stat. § 31.031 (1976).

<sup>28/</sup> Minn. Stat. § 31.032(1) (1976). But see § 31.032(2).

<sup>29/</sup> Minn. Stat. § 31.032(3) (1976).

<sup>30/</sup> Minn. Stat. § 31.14 (1976). But before the Commissioner notifies such an attorney, the alleged violator must be given notice and an opportunity to present his views. Id. Also, the Commissioner is not required to report minor violations. Minn. Stat. § 31.041 (1976).

<sup>31/</sup> Minn. Stat. § 31.07 (1976). This would not, it seems clear, prevent a cause of action for other types of damage.

## 2. Frozen Food Processing Plants

A frozen food processing plant means an establishment in which food is processed and frozen for frozen storage. <sup>1/</sup> Every person who operates such a plant, or who is engaged as a processor <sup>2/</sup> in such a plant, must apply for a license. <sup>3/</sup> The Commissioner may withhold a license from an applicant "whom he may deem untrustworthy" and may revoke a license in certain situations. <sup>4/</sup>

It is illegal to store goods not intended for human consumption in a frozen food processing plant unless it is kept in a separate room with a separate entrance. <sup>5/</sup> Food cannot be stored in a refrigerated locker unless the locker is in proper condition for storage and meets all the requirements of law and the regulations of the Department of Agriculture. <sup>6/</sup> All food must be inspected by the plant manager or butcher and then sharp frozen before it can be placed in a refrigerated locker. <sup>7/</sup> The temperature in

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<sup>1/</sup> Minn. Stat. § 31.185(1) (1976).

<sup>2/</sup> A "processor" is any person who, for compensation, cuts, wraps, and freezes meat or meat products for frozen storage by the ultimate consumer. Minn. Stat. § 31.185(1) (1976).

<sup>3/</sup> Minn. Stat. § 31.185(2) (1976) (the license is pursuant to Minn. Stat. § 28A.04). The Commissioner will issue a license if he finds that the applicant maintains a proper place for the storage of frozen foods, has proper cooling and freezing facilities, maintains a proper place for processing meat, and meets all sanitation requirements. Id.

<sup>4/</sup> Minn. Stat. § 31.185(4) (1976). The provisions for license revocation may not meet due process requirements. See *House of Tobacco, Inc. v. Clavert*, 394 S.W.2d 654 (Tex. 1965) (revocation of license to sell cigarettes required notice and hearing); see also *Ex parte Robinson*, 86 U.S. 505 (1873) (effort to summarily disbar a lawyer held improper); contra, e.g., *Smith v. Iowa Liquor Control Commission*, 169 N.W.2d 803 (Iowa 1969). Resolution of this type issue may turn on the "respectability" of the "profession" involved.

<sup>5/</sup> Minn. Stat. § 31.185(7) (1976).

<sup>6/</sup> Minn. Stat. § 31.185(6) (1976).

<sup>7/</sup> Minn. Stat. § 31.185(8) (1976).

the locker cannot exceed five degrees Fahrenheit. <sup>8/</sup> Each package must be stamped with the date of entry of such package into the locker. <sup>9/</sup>

Owners and operators of frozen food processing plants are not "warehosuemen" and the receipts they issue are not negotiable warehouse receipts. <sup>10/</sup> The owner or operator, however, does have a lien upon all property within his plant for the handling, keeping, and storing of such property. <sup>11/</sup>

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<sup>8/</sup> Id.

<sup>9/</sup> Id.

<sup>10/</sup> Minn. Stat. § 31.185(9) (1976).

<sup>11/</sup> Minn. Stat. § 31.185(10) (1976). This lien may be enforced by any remedy allowed by law for the enforcement of a lien against personal property and includes the right to recover that part of its claim not paid by the proceeds of the sale of the property.

### 3. Canneries

All commercial canneries are under the supervision and regulation of the Commissioner of Agriculture. <sup>1/</sup> In general terms, a commercial cannery is a place where food is received in a raw or partly processed form (except for meat frozen in retail stores for sale directly to the consumer) for the purpose of canning in hermetically sealed containers, and the products is placed on the market for general consumption as human food. <sup>2/</sup> The term does not include private home canning for one's own personal use <sup>3/</sup> nor does it include a food establishment that processes meat or poultry products under the supervision of the U.S. Department of Agriculture. <sup>4/</sup>

Canneries are inspected by qualified sanitarians appointed by that Commissioner of Agriculture. <sup>5/</sup> Inspections include bacteriological surveys and checks on the quality of the raw materials used in the canning process as well as general sanitation type inspection. <sup>6/</sup> The Commissioner must publish public bulletins on the conditions found in canning factories. <sup>7/</sup>

Any person owning or operating a canning factory must notify the Commissioner, in writing, each year by June 1 of its intent to operate that season. <sup>8/</sup> The Commissioner will furnish each complying canning factory

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<sup>1/</sup> Minn. Stat. § 31.31 (1976).

<sup>2/</sup> Id.

<sup>3/</sup> Also note that no commercial canning of food products is permitted in a house or dwelling or in the basement of any building. Minn. Stat. § 31.392 (1976).

<sup>4/</sup> Minn. Stat. § 31.31 (1976).

<sup>5/</sup> Minn. Stat. § 31.311 (1976).

<sup>6/</sup> Id.

<sup>7/</sup> Minn. Stat. § 31.32 (1976).

<sup>8/</sup> Minn. Stat. § 31.37 (1976).



with a certificate of inspection after inspecting such cannery, and this authorizes the cannery to print on its label: "Packed under regulations of, and in cannery inspected by, Minnesota Department of Agriculture." <sup>9/</sup>

The Commissioner collects an assessment from canneries for inspection and services furnished. <sup>10/</sup> The minimum assessment is \$100, the maximum \$2,500 or  $\frac{1}{2}$  cent per case of food packed, whichever is less. <sup>11/</sup> A person failing to comply with these provisions of the law is chargeable with a misdemeanor. <sup>12/</sup>

It is illegal to manufacture or to use in the process of canning of fruits and vegetables any canning compound which is adulterated. <sup>13/</sup> A preservative compound <sup>14/</sup> is considered adulterated if it contains any added poisonous, deleterious, unwholesome or injurious ingredient which may render the article injurious to health. <sup>15/</sup> Formaldehyde, hydrofluoric acid, salicylic acid, sulphurous acids, and derivatives thereof are declared injurious. <sup>16/</sup> Possession of a preservative compound adulterated (as described above) with intent to sell is unlawful and constitutes a misdemeanor. <sup>17/</sup>

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<sup>9/</sup> Minn. Stat. § 31.38 (1976).

<sup>10/</sup> Minn. Stat. § 31.39 (1976).

<sup>11/</sup> Id. The annual assessment is reduced by the amount charged for a license under § 28A.08. Id.

<sup>12/</sup> Minn. Stat. § 31.393 (1976).

<sup>13/</sup> Minn. Stat. § 31.402 (1976).

<sup>14/</sup> A "preservative compound" includes all articles used for preservative purposes, whether simple, mixed, or compound, and any substance used as a constituent in the manufacture thereof. Minn. Stat. § 31.401 (1976).

<sup>15/</sup> Minn. Stat. § 31.404 (1976).

<sup>16/</sup> Id.

<sup>17/</sup> Minn. Stat. § 31.403 (1976). Possession is prima facie violation of this section. Id. In other words, intent to sell will be inferred from possession unless the possessor can prove the absence of intent to sell. An article is not considered adulterated if intended for export and it is in compliance with the specifications of the foreign country. Minn. Stat. § 31.402 (1976).

#### 4. Food Salvage

It is illegal to operate as a salvage food processor <sup>1/</sup> or to engage in reconditioning or salvaging of distressed food <sup>2/</sup> unless licensed. <sup>3/</sup> Before issuing a license, the Commissioner must determine that the applicant's establishment minimum requirements pertaining to adequacy of buildings, location, water supply, waste disposal, equipment, hand washing and toilet facilities, and general sanitation practices. <sup>4/</sup>

A salvage food processor cannot sell distressed food until it has been inspected by the Commissioner. <sup>5/</sup> If the Commissioner finds that the distressed food is salvagable and in need of salvage, he can direct that it be reconditioned. <sup>6/</sup> If not salvageable for human food, it may be salvaged for animal feed or seed, or it may be considered unsaleable for any purpose in which case it is disposed of under the Commissioner's supervision. <sup>7/</sup>

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<sup>1/</sup> A "salvage food processor" is a person who holds a license under § 28A.04 to operate as a salvage food processor and who receives supervision of his salvaging operations from the Commissioner. Minn. Stat. § 31.495 (1)(3) (1976).

<sup>2/</sup> "Distressed food" is any food the label of which has been lost, defaced, or obliterated; or food which has been subjected to possible damage due to accident, fire, flood, adverse weather, or any similar cause; or food which is suspected of having been rendered unsafe or unsuitable for food use. Minn. Stat. § 31.495(1)(a) (1976).

<sup>3/</sup> Minn. Stat. § 31.495(2)(a) (1976).

<sup>4/</sup> Minn. Stat. § 31.495(2)(b) (1976).

<sup>5/</sup> Minn. Stat. § 31.495(4)(a) (1976).

<sup>6/</sup> Id.

<sup>7/</sup> Id.

The food salvage law is not applicable to:

1. a food manufacturer who, in the normal course of business, reconditions food as long as the food reconditioned is not purchased solely for that purpose,
2. a person who undamaged food from lots of food which is damaged while in his possession and which was not purchased solely for the purpose of reconditioning, or
3. a person who handles or processes grain or oil seeds in the normal course of business except when such person purchases for the purpose of reconditioning and sale as human food grain or oil seeds contaminated by bird, rodent, or animal excreta or by chemicals poisonous, injurious, or detrimental to human life or health. <sup>8/</sup>

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<sup>8/</sup> Minn. Stat. § 31.495(5) (1976).

5. Kosher Foods

It is unlawful to sell or expose for sale meat falsely represented as kosher or to label meat as kosher unless it has been prepared or processed in accordance with orthodox Hebrew religious requirements sanctioned by a recognized rabbinical council. <sup>1/</sup> Any person who sells both kosher and nonkosher meat, except when such kosher meats are prepackaged in separate consumer packages properly labelled kosher, must indicate in his window signs and in all display advertising in block letters at least four inches in height "kosher and nonkosher meat sold here" and shall display over each kind of meats a sign in block letters at least two inches in height reading, "kosher meat" or "nonkosher meat" as the case may be. <sup>2/</sup>

The following activities are illegal:

1. willfully marking or otherwise labelling or representing as kosher food which is not;
2. willfully obliterating or alternating the original slaughter-house plumba or any other mark affixed to food to indicate that it is kosher; or
3. knowingly selling food as kosher when such food is not properly marked as such or food to which a kosher identification has been fraudulently affixed. <sup>3/</sup>

Violators of any of the above kosher food regulations are guilty of a misdemeanor. <sup>4/</sup>

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<sup>1/</sup> Minn. Stat. § 31.651 (1976).

<sup>2/</sup> Minn. Stat. § 31.651 (1976). Possession of nonkosher meat in any place of business is presumptive evidence that the possessor thereof exposes the same for sale. Id. The absence of a duly sanctioned kosher "plumba" mark is prima facie evidence that the product is nonkosher. Id.

<sup>3/</sup> Minn. Stat. § 31.661 (1976).

<sup>4/</sup> Minn. Stat. § 31.681 (1976).

6. Honey

All honey sold or kept for sale must conform to the standards and grades adopted by the Commissioner of Agriculture. 1/ These standards were adopted to promote the bee industry in Minnesota and to secure uniformity. 2/ Persons violating this section or the standards and grades adopted are guilty of a misdemeanor. 3/

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1/ Minn. Stat. § 31.73 (1976).

2/ Id.

3/ Id.

7. Dietary Foods

It is lawful to sell food or beverages as a special dietary product when it is sweetened with saccharin, sulfamate, or other artificial sweetener approved by the Commissioner when this sweetener is completely substituted for sugar. <sup>1/</sup> The container of any such food or beverage must be clearly and noticeably labelled "For Dietary Purposes," "Artificially Sweetened," or a substantially similar statement approved by the Commissioner. <sup>2/</sup> The label must also contain a statement that the product contains \_\_\_\_\_ and a statement that the product contains a nonnutritive artificial sweetener for use by persons who desire to restrict their intake of ordinary sweets. <sup>3/</sup>

The Commissioner is empowered to establish rules and regulations prescribing the use of nutritive sweeteners which are consistent with rules established under federal laws. <sup>4/</sup>

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<sup>1/</sup> Minn. Stat. § 31.75(1) (1976).

<sup>2/</sup> Id.

<sup>3/</sup> Id.

<sup>4/</sup> Minn. Stat. § 31.75(2) (1976).

8. Bakeries

The State of Minnesota has promulgated regulations through the Department of Agriculture relating to sanitary conditions for bakeries and bakery products and standards of identity and labelling requirements for bakery products, which are at least as stringent as those fixed by the U.S. Department of Health, Education, and Welfare. 1/ No subdivision of the state can require sanitary requirements which are not consistent with these regulations. 2/

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1/ Minn. Stat. § 31.77 (1976). See Minn. Reg. Agr §§ 4251-4270.

2/ Minn. Stat. § 31.77 (1976).

## 9. Quality Assurance Dating

The Minnesota Department of Agriculture is authorized to promulgate rules which provide for a quality assurance date on perishable foods. <sup>1/</sup>  
A quality assurance date is any date after which the manufacturer or processor reasonably determines that the product may, by spoilage, wiltage, drying, or any other foreseeable and normal natural phenomenon, lose its palatability or its desired or nutritive properties. <sup>2/</sup> The date shall include the day, month, and, if approximate, the year. <sup>3/</sup>

The statute's definition of perishable food is a somewhat circular nondefintion. It states that perishable food means "any food intended for human consumption (ther than meat and poultry, frozen food, or fresh fruit or vegetables) which has a quality assurance date." <sup>4/</sup> It is not clear why the foods listed in parentheses are exempted. At any rate, the definition seems to suggest that if a food does not have a quality assurance date on it, it will not perish. Such was surely not the intended meaning. What the draftsman was probably trying to say was that those foods which must have a quality assurance date are those foods determined by the Commisioner in his regulations to require such.

The expiration of the quality assurance date does not mean the product must be removed from sale, nor does it imply that the product is unwholesome or unsafe. <sup>5/</sup>

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<sup>1/</sup> Minn. Stat. § 31.781 (1976). See Minn. Reg. Agr. §§ 4031 et seq.

<sup>2/</sup> Minn. Stat. § 31.782(4) (1976).

<sup>3/</sup> Id.

<sup>4/</sup> Minn. Stat. § 31.782(3) (1976).

<sup>5/</sup> Minn. Stat. § 31.784 (1976).



The Commissioner is empowered to investigate possible violations of this law and to take samples of perishable foods for analysis. <sup>6/</sup> Any person injured by a violation of this law may bring a civil action and recover damages, together with costs and disbursements. <sup>7/</sup>

10. Minnesota Logo

The Commissioner of Agriculture was recently given the power to establish a state logo or labeling statement for use in identifying food products which are Minnesota grown, processed or manufactured. <sup>8/</sup> Rules governing the use of the logo may be promulgated. The logo does not supersede or replace any federal label or grade standard which is required by law. Its use is discretionary with the grower, processor, or manufacturer. <sup>9/</sup>

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<sup>6/</sup> Minn. Stat. § 31.787 (1976).

<sup>7/</sup> Minn. Stat. § 31.788 (1976).

<sup>8/</sup> Act of April 18, 1979, Ch. 36, 1979 Minn. Sess. Law. Serv. 50 (West).

<sup>9/</sup> Id.

B. Meat

Meat regulation and inspection is carried on primarily by the federal government under the Federal Meat Inspection Act <sup>1/</sup> and under the Federal Food, Drug, and Cosmetic Act. <sup>2/</sup> Minnesota regulates this industry to a limited extent and conducts an inspection program of intrastate meat. This section discusses the scattered sections of the law regulating the meat industry and the Minnesota Meat Inspection Act.

1. Meats, Generally. The Meat Industry Division of the State Department of Agriculture is charged with enforcement and administration of laws relating to meat, fish, and dressed poultry. <sup>3/</sup> The Minnesota Meat Improvement Board advises the Director of the Meat Industry Division and the Commissioner of Agriculture in the development of the meat industry in the state. <sup>4/</sup>

Dealers of meat, fish, fowl or game for human food must protect it from dust, flies, and other vermin or substance which may injuriously affect it by securely covering it while it is exposed for sale or while it is being transported. <sup>5/</sup> In addition, every seller, for human food, of domestic or wild fowl, slaughtered rabbits, squirrels, or other small animals -- wild or tame -- must remove the entrails, crops, or other offensive parts. <sup>6/</sup>

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<sup>1/</sup> 21 U.S.C. § 71 et seq.

<sup>2/</sup> 21 U.S.C. § 301 et seq.

<sup>3/</sup> Minn. Stat. § 31.60(1)(1976). This does not include those laws enforced and administered by the Division of Poultry Industries. Id.

<sup>4/</sup> Minn. Stat. § 31.60(2)(1976). The Board must have one representative from each of the following: (1) retail meat dealers, (2) frozen food processing plants, (3) slaughter houses, (4) wholesale sausage manufacturers, (5) federally inspected meat packers, (6) livestock producers, (7) consumers, (8) public health officials, and (9) veterinarians. Id.

<sup>5/</sup> Minn. Stat. § 31.601(1976). A violation is a misdemeanor. Id.

<sup>6/</sup> Minn. Stat. § 31.602(1976). A violation is a misdemeanor. Id.

a. Horse meat. Certain requirements must be met before a person can offer horse meat for sale for human consumption. <sup>1/</sup> The requirements are (1) a sign must be conspicuously posted both inside the store or eating establishment reading "horse meat sold here," (b) the horse meat must either be in a separate counter marked horse meat, or, if in the same counter with other meat, each cut must be plainly labeled horse meat, and (c) all containers in which horse meat is delivered to the purchaser must be conspicuously marked horse meat. A restaurant serving horse meat must also post signs reading "horse meat served here" both inside and outside the building and must have the same words printed on all menus used. <sup>2/</sup>

If horse meat is mixed with other meat, the mixture is considered horse meat and is subject to provisions of the law relating to horse meat. <sup>3/</sup> Any person who violates a provision of the above law is guilty of a gross misdemeanor. <sup>4/</sup>

If horse meat is sold for other than human consumption, it must be denatured or decharacterized so as to make it readily distinguishable from horse meat intended for human consumption. <sup>5/</sup> All containers containing denatured horse meat must be conspicuously labeled "for animal food only." <sup>6/</sup> The Commissioner, for the purposes of inspecting such meat, has access to all places used in the preparation, distribution, or sale of any horse meat not intended for human consumption. <sup>7/</sup>

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<sup>1/</sup> Minn. Stat. § 31.621(1)(1976).

<sup>2/</sup> " " § 31.621(2)(1976).

<sup>3/</sup> " " § 31.621(3)(1976).

<sup>4/</sup> " " § 31.621(5)(1976).

<sup>5/</sup> " " § 31.631(1)(1976).

<sup>6/</sup> " " § 31.631(2)(1976).

<sup>7/</sup> " " § 31.631(3)(1976).

b. Minnesota approved meats. The Commissioner may authorize a person to label meat or meat products "Minnesota approved." <sup>1/</sup> The meat or meat products must be processed by a person licensed under Minnesota law, <sup>2/</sup> or processed by establishments under the inspection program of the U.S. Department of Agriculture. <sup>3/</sup> The ingredients in meats or meat products so labeled must be meat or meat by-products which have been inspected by the U.S. Department of Agriculture and must be wholesome and fit for human food. <sup>4/</sup> To use this label, a person must first apply to the Commissioner. <sup>5/</sup> Use of the label contrary to law is a misdemeanor. <sup>6/</sup>

c. Veal. It is illegal to sell or to possess with intent to sell the veal of calves killed when less than four weeks old. <sup>7/</sup>

2. The Minnesota Meat Inspection Act. The purpose of the Minnesota Meat Inspection Act <sup>8/</sup> is to protect the health and welfare of consumers by assuring that meat and meat food products distributed to them are wholesome, not adulterated, <sup>9/</sup> and properly marked, labeled, and packaged. <sup>10/</sup>

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<sup>1/</sup> Minn. Stat. § 31.632(1976).

<sup>2/</sup> See Minn. Stat. §§ 31.52-58.

<sup>3/</sup> Minn. Stat. § 31.632(1976).

<sup>4/</sup> Id.

<sup>5/</sup> Id.

<sup>6/</sup> Id.

<sup>7/</sup> Minn. Stat. § 31.611(1976)(misdemeanor).

<sup>8/</sup> " " §§ 31A.01-.31(1976).

<sup>9/</sup> See Minn. Stat. § 31A.02(13)(1976) for a detailed definition of adulterated.

<sup>10/</sup> Minn. Stat. § 31A.01(1976).

a. Inspections conducted. The Commissioner is empowered to inspect live animals before they enter into a slaughtering or similar establishment. 1/ If any animal shows symptoms of disease, it is set apart and slaughtered separately, and the carcasses of such animals are subject to careful examination. 2/

The carcasses of all animals capable of use as human food, and prepared solely for intrastate commerce, are inspected. 3/ The inspector labels each carcass or part thereof either "Inspected and Passed" or "Inspected and Condemned." 4/ Carcasses or parts condemned must be destroyed for food purposes in the presence of the inspector, and the Commissioner may remove inspectors from any establishment which fails to destroy a condemned carcass or part thereof. 5/ Inspectors may reinspect carcasses they have previously passed. 6/

The Commissioner shall also inspect all meat food products prepared solely for intrastate commerce. 7/ Meat which is passed is labeled or marked as "Minnesota Inspected and Passed" and products found adulterated are marked as "Minnesota Inspected and Condemned." 8/ All condemned meat

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1/ Minn. Stat. § 31A.03 (1976). The Commission is authorized to inspect these animals for the purpose of preventing the use of adulterated meat in intrastate commerce. Id.

2/ Minn. Stat. § 31A.03(1976).

3/ " " § 31A.04(1976).

4/ Id.

5/ Id.

6/ Id.

7/ Minn. Stat. § 31A.06(1976).

8/ Id.

must be destroyed. <sup>1/</sup> This food products inspection may be conducted at any time, day or night, regardless of whether the establishment is operated or not, and the inspector has access to every part of the establishment. <sup>2/</sup>

Slaughtering and meat processing establishments preparing meat solely for intrastate commerce are inspected for sanitation. <sup>3/</sup> Where sanitary conditions are such that the meat or meat products are rendered adulterated, the meat or meat products cannot be labeled "Minnesota Inspected and Passed." <sup>4/</sup>

The Commissioner may refuse to provide, or withdraw, inspection service under this Act if he determines, after a hearing, that the applicant or recipient is unfit to engage in any business requiring inspection under the Act. <sup>5/</sup> Under this provision, the applicant or recipient is unfit if he has been convicted of (1) any felony or (2) more than one non-felony based upon the acquiring, handling, or distribution of unwholesome, mislabeled or deceptively packaged food or upon fraud in connection with transactions in food. <sup>6/</sup> The determination of the Commissioner is final unless application for judicial review is made within thirty days. <sup>7/</sup>

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<sup>1/</sup> Id.

<sup>2/</sup> Id. But see Minn. Stat. § 31A.09. It implies that an inspection of food products can be conducted at night only when slaughtering or food product preparation is done at night. Section 31A.06 would probably be controlling if the inspection were an inspection of food products because it is more specific.

<sup>3/</sup> Minn. Stat. § 31A.08(1976).

<sup>4/</sup> Id.

<sup>5/</sup> Minn. Stat. § 31A.22(1976).

<sup>6/</sup> Id. This is an entirely separate provision from those authorizing withdrawal of services for failure to maintain sanitary conditions or to destroy condemned carcasses.

<sup>7/</sup> Minn. Stat. § 31A.22(1976).

When inspectors or other agents of the Commissioner are seeking information regarding suspected violations of law, their right to access is extremely broad. <sup>1/</sup> It extends well beyond slaughtering and meat processing establishments. They also have the right to take samples for analysis. <sup>2/</sup>

b. Marking and labeling inspected articles. Once meat or meat food product has passed inspection, it is placed in a container (can, pot, tin, canvas) and marked "Minnesota Inspected and Passed" and it is sealed or inclosed in the presence of an inspector. <sup>3/</sup> Carcasses found not to be adulterated are likewise marked with an official mark. <sup>4/</sup> The Commissioner is empowered to prescribe labeling materials to avoid false or misleading labeling, and he may prescribe standards of identity and standards of fill as long as he is not inconsistent with federal standards. <sup>5/</sup>

No article subject to this Act can be sold in intrastate commerce under any name or marking or labeling which is false or misleading, nor may it be sold in a container of misleading form or size. <sup>6/</sup> If the Commissioner believes any marking or labeling or the size or form of any container is false or misleading, he may direct that its use be withheld until modified in a manner he prescribes. <sup>7/</sup> The person using the marking, labeling, or container is entitled to a hearing upon request but is bound by the Commissioner's determination during the interim. <sup>8/</sup> A hearing determination by the Commission is final unless judicial review is sought within 30 days. <sup>9/</sup>

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<sup>1/</sup> Minn. Stat. § 31A.25(1976). Query whether the statute might not be unconstitutionally overbroad.

<sup>2/</sup> Minn. Stat. § 31A.25(1976).

<sup>3/</sup> Minn. Stat. § 31A.07(1976). This relates only to meat or meat food products prepared for intrastate commerce. Id.

<sup>4/</sup> Minn. Stat. § 31A.07(2)(1976).

<sup>5/</sup> Minn. Stat. § 31A.07(3)(1976). The federal standards can be found at 21U.S.C. §§ 71 et seq. and 301 et seq.

<sup>6/</sup> Minn. Stat. § 31A.07(4)(1976).

<sup>7/</sup> Minn. Stat. § 31A.07(5)(1976).

<sup>8/</sup> Id.

<sup>9/</sup> Id.

No person can make a device containing any official mark or simulation thereof, or a label containing any form of official certificate except as authorized by the Commissioner. <sup>1/</sup> Other similar proscriptions include forging an official mark; <sup>2/</sup> using without authorization or defacing an official mark; failing to use an official mark contrary to regulations; knowingly possessing an official or counterfeit mark; knowingly making a false statement in a shipper's certificate; or, knowingly misrepresenting that an article has been inspected and passed. <sup>3/</sup>

c. Exemptions. The inspection provisions of the Minnesota Meat Inspection Act do not apply: (1) to slaughter of one's own animals for one's own personal use and (2) to custom slaughter of an animal for the personal use of the owner. <sup>4/</sup> The Commissioner may, however, require that slaughters and processing of this type meet certain sanitary conditions. <sup>5/</sup>

Inspection is not provided for the slaughter of animals or the preparation of carcasses of animals which are not intended for use as human food. <sup>6/</sup> Unless these articles are naturally inedible, they must be denatured or otherwise identified to deter their use for human food. <sup>7/</sup>

d. Horse meat. Horse or other equiv meat must be conspicuously identified to show the kind of animal from which it was derived. <sup>8/</sup> This type meat must be prepared in establishments separate from those in which cattle, sheep, swine or goats are slaughtered or their carcasses are prepared. <sup>9/</sup>

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<sup>1/</sup> Minn. Stat. § 31A.11(1)(1976).

<sup>2/</sup> "Mark," as used in this sentence, includes device, label, or certificate.

<sup>3/</sup> Minn. Stat. § 31A.11(2)(1976).

<sup>4/</sup> Minn. Stat. § 31A.15(1)(1976).

<sup>5/</sup> " " § 31A.15(2)(1976).

<sup>6/</sup> " " § 31A.17(1976).

<sup>7/</sup> Id.

<sup>8/</sup> Minn. Stat. § 31A.12(1976).

<sup>9/</sup> Id.



e. Registration, business records. Any person engaged in any of the following businesses must register with the Commissioner his name, the address of each place of business and all trade names under which he conducts business: 1/ (a) a meat broker, who is a person engaged in buying and selling carcasses or meat other than for his own account or as an employee of another, (b) a renderer, (c) an animal food manufacturer, who is a person engaged in processing animal food from carcasses of animals, (d) an intrastate wholesaler of carcasses, (e) a public warehouseman storing carcasses, or (f) a person engaged in the business of buying, selling, or transporting of dead or diseased animals.

Certain classes of persons are required to keep records that disclose all transactions involved in their businesses, and to make these records available, upon notice, for examination. 2/ These businesses must also make their facilities and inventory available for examination, and must provide reasonable samples of their inventory upon payment of fair market value. 3/ The classes of persons covered by this regulation covers almost everyone involved in the meat industry. 4/

f. Detention, seizure, and condemnation. An animal, carcass or meat may be detained for a period not to exceed twenty days if (a) there is reason to believe that it is adulterated or misbranded and is capable of use as human food, (b) it has not been inspected, or (c) the article has been, or is intended to be, distributed in violation of the law. 5/ The article may be detained pending notification of the appropriate federal

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1/ Minn. Stat. § 31A.19(1976).

2/ " " § 31A.18(1976).

3/ Id.

4/ See Minn. Stat. 31A.18(1)(a)-(c)(1976).

5/ Minn. Stat. § 31A.23(1976).

authorities or pending action for seizure and condemnation, and during detention, the article cannot be moved from the place at which it is located when detained. 1/

An article or animal which meets the description of either (a) or (c) above is liable to be proceeded against and seized and condemned, on a complaint in district court. 2/ Once condemned, the article or animal may be disposed of by destruction or sale as the court directs. 3/ The owner can avoid destruction or sale by posting a bond conditioned that the animal or article will not be sold or otherwise disposed of. 4/

g. Powers of commission. In order to carry out the purposes of the Minnesota Meat Inspection Act, the Commissioner has been granted very broad information gathering and investigatory powers. These powers are quite detailed, and are best understood by carefully reading Minn. Stat. § 31A.27.

3. Slaughter Houses and Packing Plants. With certain exceptions, 5/ no person can sell any meat, poultry or rabbit product unless it comes from an animal slaughtered or processed in establishments licensed by the state 6/ or under the inspection program of the U.S. Department of Agriculture. 7/

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1/ Id.

2/ Minn. Stat. § 31A.24(1976).

3/ Id.

4/ Id.

5/ This provision does not apply to a farmer slaughtering his own animals for his own use, the use of his immediate family, or for sale directly to the consumer. Minn. Stat. § 31.56(1)(1976).

6/ See Minn. Stat. §§ 28A.04-.10(1976).

7/ Minn. Stat. § 31.56(5)(1976).

No animal that was dying when killed or that died as a result of an accident or of natural causes or disease can be accepted in a licensed food establishment. <sup>1/</sup> When it is necessary to slaughter an injured animal at a location other than in an approved establishment, the carcass may be accepted into an approved establishment if the carcass with the head and all viscera except the stomach, bladder, and intestines is inspected and approved by a licensed veterinarian. <sup>2/</sup> Every animal which is eviscerated in a state licensed establishment must have been killed and bled in the establishment. <sup>3/</sup>

The Commissioner may inspect any place of business where animal or poultry slaughtering occurs, and may order that any unsanitary conditions therein be corrected. <sup>4/</sup> Failure to comply with an order is a misdemeanor. <sup>5/</sup> The inspection may be conducted at any reasonable hour, and the inspector has access to any part of the premises. <sup>6/</sup>

All slaughter of livestock <sup>7/</sup> must be by humane methods. <sup>8/</sup> Humane methods means any method of slaughtering livestock which normally causes animals to be rendered insensible to pain by a single blow of a mechanical instrument or by shot of a firearm, by chemical or other means that are rapid and effective and which occur before the animal is shackled, hoisted, thrown, cast, or cut. <sup>9/</sup> The methods of preparation necessary to safe

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<sup>1/</sup> Minn. Stat. § 31.56(3)(1976).

<sup>2/</sup> Minn. Stat. § 31.56(3)(1976).

<sup>3/</sup> " " § 31.56(4)(1976).

<sup>4/</sup> Minn. Stat. § 31.53(1976). Each order must state the time within which it must be complied with and must be served personally or by registered mail. Id.

<sup>5/</sup> Minn. Stat. §§ 31.53, .58(1976).

<sup>6/</sup> " " § 31.53(1976).

<sup>7/</sup> "Livestock" means cattle, horses, swine, sheep and goats. Minn. Stat. § 31.59(3)(1976).

<sup>8/</sup> Minn. Stat. § 31.591(1976).

<sup>9/</sup> Minn. Stat. § 31.59(4)(1976).

handling of the animals for Jewish ritual slaughter and of slaughtering required by the ritual of the Jewish faith whereby the animal suffers loss of consciousness by anemia of the brain caused by the simultaneous and instantaneous severance of the carotid arteries with a sharp instrument is a humane method. <sup>1/</sup> The use of a manually operated hammer or sledge is declared an inhumane method of slaughter. <sup>2/</sup> Inhumane slaughter is a misdemeanor. <sup>3/</sup>

City councils have the power to prohibit or regulate slaughter houses. <sup>4/</sup> This includes the power to prevent the bringing in, or leaving in the city of unwholesome substances and to provide removal of such at the expense of the owner or occupant. <sup>5/</sup>

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<sup>1/</sup> Id.

<sup>2/</sup> Minn. Stat. § 31.59(5)(1976).

<sup>3/</sup> " " § 31.592(1976).

<sup>4/</sup> " " § 412.221(22)(1976).

<sup>5/</sup> Id.

C. Eggs

All eggs which enter into commerce have to be candled, graded, and clearly labeled. <sup>1/</sup> The grades, weight classes, and standards of quality are established by the Commissioner of Agriculture. <sup>2/</sup> After being received by the first licensed dealer, <sup>3/</sup> all eggs must be kept at a temperature of 60 degrees Fahrenheit or less.

Certain types of eggs (checks, dirties, and Grade C as defined by the Commissioner) cannot be sold for human consumption as shell eggs but may be sold to be processed for human consumption if that processor is licensed to break eggs for resale. <sup>5/</sup> It is illegal to sell inedible or adulterated eggs. <sup>6/</sup> It is also illegal to give a lesser or greater dockage for eggs unfit for human food than the actual dockage as determined by the correct candling, or to overgrade or undergrade eggs. <sup>7/</sup>

An annual inspection fee is charged of every person dealing in eggs except of a retail grocer who sells eggs previously candled and graded. <sup>8/</sup>

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<sup>1/</sup> Minn. Stat. §§ 29.23, .26 (1976).

<sup>2/</sup> *Id.* When grade, weight, and standards of quality are set by the U.S. Department of Agriculture, they are accepted and published by the state as standards for eggs involved in interstate commerce.

<sup>3/</sup> License is pursuant to Minn. Stat. § 28A.04.

<sup>4/</sup> Minn. Stat. §§ 29.23, .26 (1976).

<sup>5/</sup> Minn. Stat. § 29.235 (1976). This statute does not apply to a producer who sells shell eggs of his own production on his own premises directly to a household consumer for the consumer's own personal use. *Id.* For standards for breaking eggs, see Minn. Stat. § 29.27 (1976).

<sup>6/</sup> Minn. Stat. § 29.24 (1976). Eggs are adulterated if filthy, putrid, decomposed, or otherwise unfit, and are inedible if they contain black rots, white rots, sour eggs with green whites, eggs with stuck yolks, moldy eggs, musty eggs, eggs with blood rings, eggs containing embryo chicks, or any other eggs which are filthy, decomposed or putrid. *Id.*

<sup>7/</sup> Minn. Stat. § 29.25 (1976). Penalties are provided by Minn. Stat. § 29.28 (1976).

An annual inspection fee is charged of every person dealing in eggs except of a retail grocer who sells eggs previously candled and graded. <sup>8/</sup>  
The fee is based upon the number of cases--30 dozen capacity--are handled at each place of business during the month of April and range from a minimum of \$5 to a maximum of \$200. <sup>9/</sup>

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<sup>8/</sup> Minn. Stat. § 29.22 (1) (1976).

<sup>9/</sup> Id. A report, together with the required fee, must be filed by the end of May of each year. Id. There is a separate fee for egg breaking plants. See Minn. Stat. § 29.22(4) (1976).

D. Vegetables, Fruits

1. Potatoes

Potatoes, as used in this outline and in the statutes, means all varieties of the tuber (*solanum tuberosum* L), commonly known as Irish potatoes, offered for sale in Minnesota. <sup>1/</sup> Discussion in this section deals primarily with grading, labeling, and inspection. Potato promotion was discussed in Chapter VI, Marketing.

All potatoes sold in a closed container, except those grown by a producer and sold by that producer directly to consumer, must be graded and clearly labeled. <sup>2/</sup> These grades are established by the Commissioner of Agriculture and generally conform to accepted grades in use throughout the U.S. <sup>3/</sup> Seed potatoes are inspected and certified under different provisions of the statutes. <sup>4/</sup> It is illegal to sell potatoes which are artificially colored. <sup>5/</sup>

All potatoes shipped may be inspected by an authorized federal-state inspector to determine the grade, quality, and condition of such shipment. <sup>6/</sup> Fees will be assessed against the inspection certificate applicant. <sup>7/</sup> Inspection points are designated by the Commissioner, and if inspection service is requested at other points, mileage costs will be added to the

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<sup>1/</sup> Minn. Stat. § 30.099 (1976). See Minn. Stat. § 26.07 (Supp. 1977).

<sup>2/</sup> Minn. Stat. § 30.10 (Supp. 1977).

<sup>3/</sup> Minn. Stat. § 30.102 (Supp. 1977).

<sup>4/</sup> Minn. Stat. § 30.103 (Supp. 1977); see Minn. Stat. §§ 21.111-.122.

<sup>5/</sup> Minn. Stat. § 30.104 (Supp. 1977).

<sup>6/</sup> Minn. Stat. § 30.16 (1976).

<sup>7/</sup> Id. An application for inspection service will be denied if the applicant has not paid all fees for prior inspection service assessed against him.

inspection fee. 8/ Inspection certificates of an authorized inspector are prim a facie evidence in a court of law of both the grade and quality of potatoes offered for sale or tendered in performance of any such contract. 9/

The Commission has the right to enter any facility in which potatoes are located to inspect the potatoes for grade, quality, condition, and packs, tagging, branding and labeling. 10/

All potato inspectors are hired and paid by the state. 11/ Any gratuity, allowance, or commission in addition to the proper inspection fee constitutes bribery. 12/

The Commissioner is, as with most regulatory schemes, given authority to promulgate rules and regulations to carry out the purposes of the statutes. 13/ One of the most significant of these regulations is Minn. Reg. AGR 136 #9 which is designed to prevent the spread of potato diseases by requiring the disinfection of all containers which have been used for potatoes before such containers can be sold or transported.

## 2. Strawberries and Raspberries

All fresh strawberries and raspberries sold or shipped by a person other than the grower must be handled and sold in accordance with the rules and regulations of the Commissioner. 14/

## 3. Apples

The Commissioner is also empowered to establish official standards for grading and classifying apples offered for sale in Minnesota. 15/ All apples offered for retail sale must be conspicuously labeled with the name and address

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8/ Minn. Stat. § 30.17 (1976).  
9/ Minn. Stat. § 30.161 (Supp. 1977).  
10/ Minn. Stat. § 30.15 (1976).  
11/ Minn. Stat. § 30.152 (1976).  
12/ Id.  
13/ Minn. Stat. § 30.19 (1976).  
14/ Minn. Stat. § 30.50 (1976).  
15/ Minn. Stat. § 30.55 (1976).



of the grower or packer, the name of the variety, the minimum size, and the grade unless sold in open bins, open containers or in bags in which case each bin or display must be marked with a label bearing the name of the variety or the grade. <sup>16/</sup> All apples which fail to meet the requirements of any of the established Minnesota grades must be conspicuously marked "utility". <sup>17/</sup>

In order to ensure compliance with these provisions and with any regulations passed, the Commissioner is empowered to inspect any place where apples are sold or packed, and to inspect all apples and apple containers contained in such places. <sup>18/</sup>

These statutes and regulations are not applicable to a grower or producer selling less than 25 bushels of apples a year. <sup>19/</sup>

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<sup>16/</sup> Minn. Stat. § 30.56 (1976).

<sup>17/</sup> Id.

<sup>18/</sup> Minn. Stat. § 30.57 (1976).

<sup>19/</sup> Minn. Stat. § 30.58 (1976). The constitutionality of this exception is addressed in 26 Minn. L. Rev. 213, 214.

## E. Dairy Products

The term dairy product includes milk, cream or any product or by-product of either, or any commodity among the principal ingredients of which is one or a combination or more of them. <sup>1/</sup> The Commissioner of Agriculture is charged with enforcement of the laws relating to dairy products.

Discrimination by purchasers of dairy products is addressed in Chapter VI of this outline.

### 1. Licensing of Milk and Cream Testers

All persons who test milk or cream to determine the percentage of butterfat, and all persons who grade milk or cream either by apparatus or by organoleptic method must be licensed by the Commissioner. <sup>3/</sup> Before a license is issued, the Commissioner must determine whether the applicant is competent and qualified. <sup>4/</sup> Licenses are required of any person gathering milk or cream and transporting it in bulk from farm to plant, and every buyer of milk or cream must have at each licensed dairy plant where milk or cream is purchased, a licensed person to grade and test milk and cream. <sup>5/</sup>

Licenses issued by the Commissioner are not transferable, and expire on December 31st of each year. <sup>6/</sup> An initial license costs \$15 and each renewal is \$6. <sup>7/</sup>

### 2. Dairy Plant Licensing and Inspection

Any person engaged in the business of processing, selling, handling, or storing food must be licensed by the Commissioner of Agriculture. <sup>8/</sup>

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<sup>1/</sup> Minn. Stat. § 32.01(10) (1976).

<sup>2/</sup> Minn. Stat. § 32.021 (1976).

<sup>3/</sup> Minn. Stat. § 32.071 (1976).

<sup>4/</sup> Minn. Stat. §§ 32.072, .073 (1976).

<sup>5/</sup> Minn. Stat. § 32.074 (1976).

<sup>6/</sup> Minn. Stat. § 32.075 (1976).

<sup>7/</sup> Id. A late renewal results in a penalty of 25%.

<sup>8/</sup> Minn. Stat. § 28A.04 (1976).

Presumably, this includes dairy plants, since the Commissioner is given express authority to suspend or revoke a license granted a dairy plant in certain situations. 9/ The Commissioner is also granted authority to inspect different facilities where dairy products are made, stored or served, and where cows are kept by persons selling milk in order to insure that the facilities are sanitary. 10/

A permit is also required for the operation of a dairy plant. 11/

### 3. Dairy Product Containers

Dairy product containers used more than once must be cleaned before being reused. 12/ Every person who receives a dairy product in a container which may be used more than once and which is to be returned to the sender must promptly empty and clean the container. 13/

This law was primarily designed to deal with the situation where milk and cream was delivered in cans. With the advent of bulk delivery, the law is of little use in regulating cream can deliveries, but is still on the books and may someday have significance for some other purpose.

### 4. Dairy Industry Records

Dairy plant owners and operators and persons engaged in buying, manufacturing, or selling dairy products must keep certain books and records. 14/ These records include not only operating costs, but also such things as the

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9/ Minn. Stat. § 32.10 (1976).

10/ Minn. Stat. § 32.103 (1976). Under certain circumstances, local governments are allowed to perform inspections of this type. Minn. Stat. § 32.104 (1976). The Department of Health has some authority to inspect and certify frozen desserts, See Op. Atty. Gen., 292-F, March 8, 1954, and to regulate the sale of milk from infected premises. Minn. Reg. MHD 32D.

11/ Minn. Stat. § 32.392 (1976).

12/ Minn. Stat. § 32.106 (1976).

13/ Id.

14/ Minn. Stat. § 32.18 (1976).

amount of butterfat used and the number of pounds of butter of cheese made. 15/  
An annual report which must be kept confidential by the Commission must be  
filed each year with the Commissioner. 16/

These books and records are open to inspection by the Commissioner. 17/  
He may even have the books audited. 18/

## 5. Milk and Cream

a. Unwholesome or adultered milk or cream. It is illegal to sell, or  
to knowingly buy, unwholesome or adultered milk or cream. 19/ Milk is un-  
wholesome or adultered if (i) it is not cooled and aerated, (ii) a preserva-  
tive has been added, (iii) it is drawn from cows kept in crowded, unventilated,  
unlit or unclean places, (iv) it is drawn from unclean or diseased cows or  
from cows fed garbage or other unwholesome animal or vegetable matter, (v)  
drawn from cows within 15 days before or 5 days after calving, and (vi)  
kept in a place where bad air exists. 20/ Cream taken from unwholesome or  
adulterated milk is considered unwholesome and adultered. 21/ Milk is also  
adulterated if (i) any normal ingredient has been extracted, (ii) it contains  
a substance not a normal constituent thereof, or (iii) it contains less than  
3 1/4% butterfat; and cream is adulterated if (i) it is less than 18% butter-  
fat, or if (ii) it contains any foreign thickening or coloring substance,

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15/ Id. It is unlawful to sell butterfat or nonfat milk solids in a  
dairy product in excess of the number of pounds of butterfat or nonfat milk  
solids shown on the books. Minn. Stat. § 32.307 (1976). It is unlawful to  
permit a percentage of overrun in excess of 24% in butter. Minn. Stat.  
§ 32.203 (1976).

16/ Minn. Stat. § 32.19 (1976).

17/ Minn. Stat. § 32.20 (1976).

18/ Minn. Stat. § 32.206 (1976).

19/ Minn. Stat. § 32.21 (1976). When there is conflicting evidence as  
to whether or not milk was adulterated, this presents a jury question. Gustafson  
v. Troche Cafeteria Co., 174 Minn. 320, 219 N.W. 159 (1928).

20/ Minn. Stat. § 32.21 (1976).

21/ Id.

or any abnormal ingredient. 22/ Skimmed milk is not unwholesome or adulterated if it is appropriately labeled. 23/

b. Milk houses. Milk producers using bulk tanks for cooling and storage must have an enclosed well ventilated milk room which conforms to certain standards. 24/ The floor must be of an impervious material and graded to provide proper drainage, the walls and the ceiling must be sealed and constructed of an easily cleaned material, the windows must be screened, and the door must be self-closing. 25/ There are numerous other requirements relating to tank location, lighting and water. 26/

c. Milk bought by weight. Milk and cream must be bought by weight with payment made on the basis of fat contained therein. 27/ The purchase price of whole milk is based upon a declared purchase price for 100 pounds of whole milk, such declared price being calculated at 3 1/2 pounds of milkfat per hundredweight with an adjustment for each one-tenth of one percent of milkfat above or below 3.5%. 28/ The percentage of milk fat is determined by either the Babcock test or an alternative test approved by the Commissioner. 29/ It is a misdemeanor to falsely misread or in some instances, to incorrectly test the milk fat content. 30/

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22/ Id.

23/ Minn. Stat. § 32.22 (1976). The label "skimmed milk" must appear on the top of side of the container in black letters on a light background and the letters must be at least 1" high and 1/2" wide. Id.

24/ Minn. Stat. § 32.212 (1976). Any bulk tank sold at retail must be accompanied by a copy of this statute. Minn. Stat. § 32.213 (1976).

25/ Minn. Stat. § 32.212 (1976).

26/ Id.

27/ Minn. Stat. § 32.25 (1976). Skim milk and buttermilk bought by one dairy plant from another is also sold by weight, but payment is based upon the nonfat milk solids contained therein. Id.

28/ Minn. Stat. § 32.25(1) (1976).

29/ Id.

30/ Minn. Stat. § 32.25 (1976).

d. Pasteurization, grade A. Pasteurization refers to the process of heating every particle of milk either to 143 degrees Fahrenheit and holding such temperature for at least 30 minutes or to 161 degrees and holding such temperature for at least 15 seconds. 31/ Immediately after pasteurization, the milk should be cooled to 50 degrees or lower until it is delivered (unless it is to be cultured). 32/

Milk cannot be sold for human consumption unless it has been pasteurized and labeled as having been pasteurized. 33/

Grade A pasteurized milk is milk in which the bacterial count after pasteurization at no time exceeds the logarithmic average of 30,000 bacteria per milliliter. 34/ The identity, production and processing standard for grade A milk are established by regulation. A processor desiring to use the grade A label on milk must apply for a permit with the Commissioner. 35/ The processor must assist his producers in complying with grade A requirements, and the Commissioner will check both plants and farms to ensure that these requirements are being met. 36/

Pasteurized milk other than grade A can have a bacterial count up to 50,000 bacteria per milliliter; raw milk which is non-grade A can have a count

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31/ Minn. Stat. § 32.25 (1976).

32/ Id.

33/ Minn. Stat. § 32.393 (1976). There is an exception for milk purchased for personal use at the farm where the milk is produced. Id., see Op. Atty. Gen., 292-F, Aug. 23, 1950.

34/ Minn. Stat. § 32.394(1) (1976). Grade A raw milk can average up to 200,000 bacteria per milliliter. Minn. Stat. § 32.394(2) (1926). Grading is not compulsory. Minn. Stat. § 32.394(3) (1916).

35/ Minn. Stat. § 32.394(5) (1976).

36/ Minn. Stat. § 32.394(6) (1976). The Commissioner will, for a fee, inspect a plant and farms to see if they meet the requirements of grade A. Minn. Stat. § 32.394(8) (Supp. 1977). The Commissioner will also certify an individual if it meets the requirements. Minn. Stat. § 32.394(8b) (1976).

of up to 500,000 bacteria per milliliter. 37/

A municipality or other subdivision cannot set stricter standards than have been set by the state. 38/

e. Milk and cream for manufacturing. The Commissioner is empowered to set standards, grades and price differentials for milk and cream purchased for manufacturing purposes. 39/

Every purchaser of milk for manufacturing is supposed to demand, with its first milk purchase from a producer, a copy of the record of quality tests made by the former purchaser if the producer has delivered products during the preceding three months. 40/ If the producer fails to deliver the quality tests, a new quality record has to be made by testing the first four deliveries of the new producer. 41/

#### 6. Butter and Butter Substitutes

Butter must contain 80% butterfat by weight and must be manufactured from pasteurized milk or cream. 42/ Butterfat spreads of a lower butterfat content can be sold if they contain all dairy products and are labeled to disclose the butterfat and other ingredient content and distinguished from butter. 43/

If renovated butter is marketed, it must be conspicuously labeled as such. 44/ The same is true with "patent butter". 45/

To be sold, including sale by food establishments, in Minnesota, butter

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37/ Minn. Stat. § 32.395 (1976).

38/ Minn. Stat. § 32.397 (1976).

39/ Minn. Stat. § 32.401 (1976).

40/ Minn. Stat. § 32.411 (1976).

41/ Id.

42/ Minn. Stat. § 32.471 (1976).

43/ Id.

44/ Minn. Stat. § 32.472 (1976).

45/ Minn. Stat. § 32.413 (1976).

must be graded and labeled with one of the following grades:

Grade AA - 93 score

Grade A - 92 score

Grade B - 90 score

Grade, undergrade - all butter below B 46/

The score is based upon an examination for flavor and aroma, body and texture, color and salt. 47/

It is unlawful, with certain exceptions, to use the words "butter" or "buttered" to advertise or represent, in any manner, a food product not produced wholly from pure unadulterated milk or cream. 48/ Exceptions are made for plum butter, apple butter, peanut butter and food articles where the word "butter" or "buttered" immediately precedes the name of the food and which contains a minimum of 51% butter as shortening (except pretzels which may contain a minimum of 10% as shortening). 49/ Butter substitutes cannot be sold or advertised for sale in connection with the word "butter", "creamery", or "dairy". 50/

It is also unlawful to manufacture or sell food containing imitation flavoring of butter labeled or represented with the words "butter", "buttered", "butter flavored" or any other words or symbols which imply a quality to the food which is misleading. 51/ Compound foods containing imitation flavor

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46/ Minn. Stat. § 32.475 (1976).

47/ Id.

48/ Minn. Stat. § 33.01 (1976).

49/ Id.

50/ Minn. Stat. § 33.02 (1976). This provision is not rigidly enforced (e.g., "it's not nice to fool mother nature"), but if it were, there would seem to be some question about its constitutionality under current 1st Amendment commercial speech doctrine.

51/ Minn. Stat. § 33.03 (1976). A violation of sections 33.01, 33.02 or 33.03 is a misdemeanor. Minn. Stat. § 33.032 (1976).



must be labeled "artificial flavor added" or "with artificial flavor" and cannot use any other descriptive statements or claims regarding this flavor. 52/

All oleomargarine must be labeled with a light colored label and in black 36-point bold-faced capitals, the word "oleomargarine". 53/ Immediately after this word, on the same label, must be printed the name and percentage of each ingredient contained in the oleomargarine, giving the name of each animal or vegetable from which such fats or oils are derived. 54/ In addition, yet another statute requires that oleomargarine be marked on the outside of each package with the word "oleomargarine". 55/ A separate statute prohibits the use of descriptive matter upon the label which tends to convey that the product is derived from other than the ingredients of which it is composed. 56/

Any place which serves food for pay must serve butter unless it plainly prints upon every bill of fare the words "oleomargarine used in place of butter", or, if no bill of fare is used, the same words must be posted upon each wall of the eating room. 57/ This provision does not apply to school districts within the state serving oleomargarine. 58/ Any public eating

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52/ Minn. Stat. § 33.03 (1976). Food flavors or extracts must be labeled according to the requirements of the Commissioner of Food and Drugs, U.S. Department of Health, Education and Welfare. Id.

53/ Minn. Stat. § 36.06 (1976). A statute which had prohibited the sale of yellow colored margarine has been repealed. See Laws 1931, c. 344, § 1 codified as Minn. Stat. § 3304.

54/ Minn. Stat. § 33.06 (1976).

55/ Minn. Stat. § 33.07 (1976). The relationship between this statute is very unclear, a result which may not be entirely unintentional.

56/ Minn. Stat. § 33.08 (1976). Examples given in the statute include labeling oleomargarine with "dairy rolls", "country rolls", "Guernsey", "Jersey", or "Holstein". Id.

57/ Minn. Stat. § 33.09 (1976). Minn. Stat. § 33.091 (1976), provides a minimum penalty for violations of sections 33.06 to 33.09.

58/ Op. Atty. Gen., 8266, Nov. 23, 1966.

place serving oleomargarine must cover each separate serving with sanitary paper or patty divider upon which is printed the word "margarine". 59/

Minnesota law no longer provides for a special tax on yellow oleomargarine. 60/

#### Cheese

Minnesota Farmstead Cheese is cheese manufactured in Minnesota on the same farm on which the milk is produced and which is manufactured while the milk is less than 48 hours old. 61/ Cheese can't be labeled as Minnesota Farmstead Cheese unless it meets these requirements and the manufacturer has obtained a written permit from the Commissioner of Agriculture. 62/ A permit is issued if the Commissioner is satisfied that the requirements in sentence 1 are met. 63/ Inspections of farmers at reasonable times may be made to insure compliance. 64/

Cheese 65/ must be manufactured from milk which has been pasteurized, 66/ subjected to heat treatment equivalent to pasteurization during the manufacturing process, or subjected to an aging process whereby it is kept at least 60 days after manufacture at a temperature not lower than 35 degrees Fahrenheit. 67/ A manufacturer's statement must be affixed to each cheese stating (a) the factory

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59/ Minn. Stat. § 33.111 (1976).

60/ See Minn. Stat. § 33.10(3) (1976).

61/ Minn. Stat. § 32.486(1) (Supp. 1977).

62/ Minn. Stat. § 32.486(2) (Supp. 1977).

63/ Minn. Stat. § 32.486(3) (Supp. 1911). The Commissioner also has authority to suspend or revoke the permit. Id.

64/ Minn. Stat. § 32.486(3) (Supp. 1977).

65/ "Cheese" included all varieties of cheese, cheese spreads, cheese foods, cheese compounds, or processed cheese made from cow's, goat's or sheep's milk. Minn. Stat. § 32.481 (1926).

66/ Minn. Stat. §§ 32.391 and 32.392 describe pasteurization.

67/ Minn. Stat. § 32.482 (1976).

number or name and address of the manufacturer, 68/ (b) the variety or distinctive name, and (c) the word pasteurized if made from pasteurized milk or the date of manufacture if from unpasteurized milk. 69/

#### 8. Filled Dairy Products

The purpose of the Minnesota Filled Dairy Products Act 70/ is to protect the public from the confusion, fraud, and deception which results from the fact that filled dairy products resemble genuine dairy products so closely that they lend themselves readily to substitution for or confusion with dairy products. 71/ A filled dairy product is milk or milk product to which has been added any fat or oil other than milk fats so that the resulting product is in imitation of the dairy product. 72/ The term does not include oleo-margarine, certain foods prepared for special dietary or medicinal use, or certain foods to which chocolate or vitamins have been added. 73/

It is illegal to sell a filled dairy product under the name of a dairy product or as a labeled imitation thereof, or under any fictitious or trade name. 74/

#### 9. Frozen Dairy Foods

Frozen dairy foods include ice cream, frozen custard, French ice cream, French custard ice cream, ice milk, fruit sherbets, water ices, frozen malted

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68/ With cheese spreads, process cheese, cheese foods and cheese compounds, the name and address of the distributor or jobber may be substituted for the manufacturer. Minn. Stat. § 32.483(a) (1976).

69/ Minn. Stat. § 32.483 (1976).

70/ Minn. Stat. §§ 32.53-.534 (1976).

71/ Minn. Stat. § 32.53 (1976).

72/ Minn. Stat. § 32.531(6) (1976).

73/ Id.

74/ Minn. Stat. § 32.5311 (1976). Filled dairy products can be used in state institutions for the purpose of conducting medicinal research limited to the effect of animal fat in the diet of humans. Id. A cheese compound for Havoring popcorn was not contrary to this statute. Op. Atty. Gen., 135-B-4, Oct. 25, 1935.

milk, frozen milk shakes, and frozen malts. 75/ Any manufacturer of these foods, or of ice cream mix or ice cream mix base must be licensed by the Department of Agriculture. 76/

Frozen dairy food not manufactured in the state must be inspected by and registered with the Department of Agriculture before it can be sold in Minnesota. 77/ Each application for registration must be accompanied by samples of all frozen dairy foods and by a fee of \$100. 78/

The Commissioner has the power to suspend or revoke any license or certificate of registration granted. 79/

Every package of frozen dairy food must be labeled giving the name of the product, the name and address of the manufacturer or distributor, and a statement of the net content. 80/ Mix or mix base labels must contain this information plus the percentage of milk fat and the percentage of total solids in the product. 81/ When the name and address of the distributor is given in either of these situations, the name and address of the manufacturer must also be given or an identification number assigned by the Commissioner may be used to represent such manufacturer. 82/

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75/ Minn. Stat. § 32.55(2) (1976). See § 32.55 for definitions.

76/ Minn. Stat. § 32.56 (1976). There are exceptions for charitable, religious and fraternal organizations not regularly engaged in such manufacture and for private home manufacturing for one's own use. Id. For definitions of mix and mix base, see Minn. Stat. §§ 32.55(4), (5), (1976). For mobile plant licensing, see Op. Atty. Gen., 135a-8, May 12, 1960.

77/ Minn. Stat. §§ 32.57, .59 (1976).

78/ Minn. Stat. § 32.59 (1966).

79/ Minn. Stat. § 32.61 (1976).

80/ Minn. Stat. § 32.62(1) (1976). Note that ultimate liability of the manufacturer or distributor in products liability may depend upon which is listed on the label. See, e.g. *Slavin v. Francis H. Leggett & Co.*, 114 N.J.L. 421, 177A.120 (1935).

81/ Minn. Stat. § 32.62(1) (1976).

82/ Id.

Frozen dairy food, mix and mix base cannot be sold unless it conforms to the standard of identity prescribed by the Commissioner. <sup>83/</sup> Imitation ice cream cannot be sold. <sup>84/</sup> When ice milk is sold, it must be conspicuously labeled ice milk, and any establishment serving ice milk must post signs which read "ice milk sold here". <sup>85/</sup> Frozen dairy food, mix and mix base cannot be sold if its brand name or label or the advertising accompanying it gives a false indication of its origin, character, composition, name of manufacturer, or is otherwise misleading. <sup>86/</sup> Any plant used for the manufacture of any of these foods must be kept clean and sanitary. <sup>87/</sup>

All mix must be pasteurized, and immediately thereafter cooled. <sup>88/</sup> A properly maintained recording chart must be kept recording each batch of mix pasteurized, and this must be available for inspection by the Department of Agriculture. <sup>89/</sup> After pasteurization, the mix must meet bacterial or coliform counts established by the Commissioner based upon tests of packages within the possession of the manufacturer. <sup>90/</sup>

Penalties for violation of the frozen dairy food laws range from conviction for a gross misdemeanor to license suspension or revocation. <sup>91/</sup>

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<sup>83/</sup> Minn. Stat. § 32.62(2) (1976). See Minn. Reg. AGR §§ 1136-42; 1266-78.

<sup>84/</sup> Minn. Stat. § 32.62(2) (1976).

<sup>85/</sup> Id.

<sup>86/</sup> Id.

<sup>87/</sup> Minn. Stat. § 32.63 (1976).

<sup>88/</sup> Minn. Stat. § 32.64 (1976).

<sup>89/</sup> Id.

<sup>90/</sup> Id.

<sup>91/</sup> Minn. Stat. § 32.645 (1976).

F.. Beverages

It is unlawful to manufacture or mix soft drinks or other non-alcoholic beverages without first obtaining a license from the Commissioner of Agriculture. 1/ Soft drinks and other non-alcoholic beverages include carbonated or still beverages; natural and mineral waters, carbonated, plain or otherwise; and apple or fruit ciders, natural or reconstituted fruit juices, or cereal or other finished beverages. 2/

Any soft drink or other non-alcoholic beverage offered for sale must first be inspected by and registered with the Commissioner. 3/ A seller of such beverage cannot label or represent his product by the use of a trademark, trade name or proprietary name other than one owned by him unless the beverage is sold under franchise, license, permit or contract with the owner of such mark or name. 4/

Distributors of soft drinks or other non-alcoholic beverages manufactured outside of the state wishing to distribute in Minnesota must first register with the Commissioner. 5/ The registration application should be accompanied by a registration fee of \$100 and a sample of all beverages to be sold. 6/ The distributor need not register if the label, in addition to other required information, gives the identity of a licensed manufacturer. 7/ Identity means either the actual name and address, including zip code, of the manufacturer

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1/ Minn. Stat. § 34.02 (1976). Each city in Minnesota has the authority to license and regulate vendors of non-intoxicating beverages, to impose a license fee, and to punish violators of the ordinance establishing such. Minn. Stat. § 461.02 (1976). A County Board has authority to license and regulate retail vendors of soft drinks and other non-alcoholic beverages located outside city limits. Minn. Stat. § 375.193 (1976).

2/ Minn. Stat. § 34.01(2) (1976).

3/ Minn. Stat. § 34.03 (1976).

4/ Minn. Stat. § 34.11 (1976).

5/ Minn. Stat. § 34.05(1) (1976).

6/ Id.

7/ Minn. Stat. § 34.05(2) (1976).

or an identification code consisting of the number for the IBM Numerical Code of States representing the state of origin followed by the plant number corresponding to a permanent list of numbers assigned by the state regulatory agency having jurisdiction. 8/

Fermented malt beverages cannot be sold in Minnesota unless 2/3 of the grain used in its manufacture consists of barley malt. 9/ A fermented malt beverage is any liquor capable of being used for beverage purposes made by the alcoholic fermentation of an infusion of potable water of barley malt and hops, with or without unmalted grains or decorticated or degerminated grains or sugar, which contains 1/2 of 1 percent or more of alcohol by volume. 10/ The Department of Agriculture is charged with enforcing this provision, and is authorized to procure samples on the open market for chemical analysis. 11/

The Non-intoxicating Malt Liquor Act 12/ gives counties and cities the authority to license and regulate retail and wholesale sales of non-intoxicating malt liquors. 13/ Non-intoxicating malt liquor is any malt liquor containing 1/2 to 3.2% alcohol by weight. 14/ A discussion of this Act and other liquor laws is beyond the scope of this outline. Chapter 340 of the Minnesota Statutes deals with those topics.

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8/ Id. If the manufacturer cannot be identified because of misuse of the identity code, the product is deemed misbranded. Id.

9/ Minn. Stat. § 34.12 (1976).

10/ Minn. Stat. § 34.119 (1976).

11/ Minn. Stat. § 34.13 (1976).

12/ Minn. Stat. §§ 340.001 to .02 and .031 to .038 (1976).

13/ Minn. Stat. § 340.01 (1976).

14/ Minn. Stat. § 340.001(2) (1976).

G. Safe Drinking Water Act

The Safe Drinking Water Act of 1977 <sup>1/</sup> gives authority to the Board of Health to carry on a number of activities designed to insure safe drinking water in all public water supplies. <sup>2/</sup> These activities include approval of site, design, construction and alteration of public water supply; inspection of facilities and records of a public water supply; contracting with local boards of health for routine surveys, inspections and testing; development of an emergency plan for a decline in the quality or quantity of water; and, promulgation of rules which include the granting of variances and exemptions. <sup>3/</sup>

If a violation of a maximum contaminant level or treatment techniques is discovered the Board will promptly notify the owner or manager of the public water supply, state the rule violated, and state a date by which the violation must be corrected or by which a request for variance or exemption must be submitted. <sup>4/</sup> The owner or manager of a public water supply must provide public notice whenever (i) the system has violated a rule of the Board, (ii) a variance or exemption is granted, or (iii) whenever the system fails to comply with the terms of a variance or exemption. <sup>5/</sup>

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<sup>1/</sup> Minn. Stat. §§ 144.381-.387 (Supp. 1977). This Act remains in effect only as long as the Federal Government pays 40% or more of the cost of administration. Minn. Stat. § 144.388 (Supp. 1977).

<sup>2/</sup> Minn. Stat. § 144.383 (Supp. 1977). A public water supply is a system providing piped water for human consumption, and either containing 15 or more service connections or serving an average of 25 persons daily for 60 days a year. Minn. Stat. § 144.382(4) (Supp. 1977).

<sup>3/</sup> Minn. Stat. § 144.383 (Supp. 1977).

<sup>4/</sup> Minn. Stat. § 144.384 (Supp. 1977).

<sup>5/</sup> Minn. Stat. § 144.385 (Supp. 1977).



#### H. Consolidated Food Licensing Act

The policy of the Minnesota Consolidated Food Licensing Law 1/ is to minimize health hazards, misinformed consumers and fraud in the purchasing of food, and to effect an efficient and simple form of licensing. 2/ All producers, processors, packagers, labelers, handlers, distributors and vendors of food must obtain a license from the Commissioner of Agriculture. 3/

Once a manufacturer, processor or distributor is licensed by the Commissioner, he is exempt from license by a political subdivision unless he locates a plant within that subdivision. 4/ But the state Supreme Court has held that possession of a license from the Commissioner did not relieve a company which set up vending machines for dispensing dairy products and non-dairy orange drink manufactured by the company from complying with municipal licensing requirements for vending machines. 5/

All persons required to have a license fall into one of four categories according to their principal mode of business. 6/ These four categories are retail food handlers, wholesale food handlers, wholesale food processors or manufacturers, and food brokers. 7/ License fees and penalties are assessed according to the type of food handler one is, and, in the case of retail food

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1/ Minn. Stat. §§ 28A.01-.16 (1976).

2/ Minn. Stat. § 28A.02 (1976).

3/ Minn. Stat. § 28A.04 (Supp. 1977). "Food" is defined as 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. Minn. Stat. § 28A.03(d) (1976).

4/ Minn. Stat. § 17.037(3) (1976).

5/ City of St. Paul v. Superior Dairy Fresh Milk Co., 244 N.W. 2d 737 (1976). (Vending machines in city other than city where processing plant located.)

6/ Minn. Stat. § 28A.05 (1976).

7/ Id.

handlers, by gross sales. 8/ No person is required to hold more than one license in order to engage in any aspect of food handling as long as he has only one place of business. 9/

All licenses are issued for a period of one year and must be posted in a conspicuous place at the place of business licensed. 10/ The transfer of a business of discontinuance of its operation voids the license, and the license must be surrendered to the Commissioner immediately. 11/

The Commissioner is empowered, after notice and hearing, to suspend or revoke any license granted under this Act. 12/

This Act has a number of exclusions. 13/ These exclusions relate to persons selling products they have raised; slaughter of one's own animals for personal use; persons licensed under other statutory provisions; persons selling only prepackaged nonperishable items through vending machines; persons selling only prepackaged nonperishable items (such as for convenience of employees); and licensed pharmacy's selling food additives and other similar items. The Act also excludes persons licensed under the liquor laws and who sell only nonperishable food items and prepackaged confections. 14/

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8/ Minn. Stat. § 28A.08 (1976). Vending machine locations are treated separately. See Minn. Stat. § 28A.09 (1976).

9/ Minn. Stat. § 28A.06 (1976).

10/ Minn. Stat. § 28A.10 (1976).

11/ Minn. Stat. § 28A.14 (1976).

12/ Minn. Stat. § 28A.13 (Supp. 1977).

13/ Minn. Stat. § 28A.15 (1976).

14/ Minn. Stat. § 28A.16 (1976).

## I. Community Health Services Act

Under this Act, eligible persons can receive vouchers for the purchase of specified nutritional supplements in type and quantity approved by the State Board of Health. 1/ Foods purchasable by these vouchers include, but are not limited to, iron fortified infant formula, vegetable or fruit juices, cereal, milk, cheese and eggs. 2/ To be eligible, a person must not be receiving a similar supplement under any federal, state or local law and must be either pregnant or breast feeding a child under 12 months, or under four years of age, and must be eligible for public assistance and certified as a nutritional risk or certified as a nutritional risk and without sufficient resources to purchase necessary nutritional supplements. 3/

A pregnant or lactating woman is a nutritional risk if she has known inadequate nutritional patterns; anemia; a history of prematurity or miscarriage; or inadequate patterns of growth such as underweight, obesity or stunting. 4/ An infant or child is a nutritional risk if he or she has a low birth weight; is deficient in patterns of growth; is anemic; or has known inadequate nutritional patterns. 5/

The State Board of Health has responsibility for developing a state plan for the delivery of nutritional supplements to eligible individuals. 6/ This includes contracting with local public or private nonprofit organizations for administration of the program, development of a public education program

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1/ Minn. Stat. § 145.893(1) (1976).

2/ Minn. Stat. § 145.897 (1976).

3/ Minn. Stat. § 145.893(2) (1976). Eligibility ceases for a lactating woman when the child is 12 months old, for a child when he or she reaches four years of age, or in either case when the local health agency certifies that the individual is no longer a nutritional risk. Minn. Stat. § 145.893(3) (1976).

4/ Minn. Stat. § 145.892(7) (1976). The status as a nutritional risk must be certified by the local health agency. Minn. Stat. § 145.893(2) (1976).

5/ Minn. Stat. § 145.892(2) (1976). See note 5, supra.

6/ Minn. Stat. § 145.894 (1976).

promoting the program, developing a voucher system, evaluating the health aspects of the program, coordinating available aid, coordinating with welfare agencies, promulgating rules and reporting to the legislature. 7/

This program is not a replacement or substitute for any other program, and the value of nutritional supplements cannot be included in eligibility determination for other assistance programs. 8/

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7/ Id.

8/ Minn. Stat. § 145.896 (1976).

## J. Containers

There are several unrelated laws in Minnesota which deal with the type of container in which a food or beverage can be sold. Some of the statutes relate to pollution control and others have to do with preventing the misleading of consumers.

State law prohibits the sale of beverage containers having detachable parts such as "pop tops". <sup>1/</sup> State law also prohibits the retail sale of milk or milk products, except for sour cream, cottage or yogurt, in nonreturnable, nonrefillable rigid or semi-rigid containers at least 50% of which is plastic. <sup>2/</sup> Implementation of this statute has been set back until July 1, 1978. <sup>3/</sup> The rationale for this provision is that the use of nonreturnable, nonrefillable containers for milk or milk products presents a solid waste management problem and promotes energy waste and depletion of natural resources. <sup>4/</sup>

The Minnesota Pollution Control Agency is charged with advising and assisting individuals and businesses in providing and developing containers consistent with the environmental policies of the State. <sup>5/</sup> If a container will contribute to the state's solid waste disposal problem, they can prohibit its use. <sup>6/</sup>

As was stated earlier, Minnesota also has statute designed to prevent deception of the consumer. For example, it is unlawful to sell certain products except in quantities of 3, 5, 10, 25, 50, 100 and multiples of 100 pounds. <sup>7/</sup>

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<sup>1/</sup> Minn. Stat. § 325.248 (1976). Violation is a misdemeanor. Id.

<sup>2/</sup> Minn. Stat. § 116F.22 (1976).

<sup>3/</sup> See Act of 1977, ch. 455, § 96, Minn. Sess. Law Serv. (West 1977).

<sup>4/</sup> Minn. Stat. § 116F.21 (1976).

<sup>5/</sup> Minn. Stat. § 116F.06 (1976). See also Minn. Reg. PCA §§ SR-1 to SR-6.

<sup>6/</sup> Minn. Stat. § 116F.06 (1976).

<sup>7/</sup> Minn. Stat. § 239.51 (1976). This statute applies to different types of flours, corn meal, hominy and hominy grits.

This statute has exceptions for retailing directly to the consumer from bulk stock, for sales of over 100 pounds to bakeries or for export, for containers of less than 3 pounds and for the exchange of wheat for flour by mills. <sup>8/</sup>

It is also unlawful to sell berries or small fruits in quantities less than 1 bushel unless the quantity sold is a quart, pint, 1/2 pint or multiple of a quart. <sup>9/</sup> These statutes have thus far avoided the trend toward the metric system.

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<sup>8/</sup> Minn. Stat. § 239.51 (1976).

<sup>9/</sup> Minn. Stat. § 239.511 (1976).

#### K. Wholesale Produce Dealers

Because perishable agricultural products cannot be repossessed in case of default of payment, the stated policy of the State of Minnesota is to afford certain financial protection to producers, farm cooperatives which are not wholesale produce dealers and licensed wholesale produce dealers. 1/

No person (except a wool dealer) can engage in the business of a dealer at wholesale unless he is licensed and bonded by the Commissioner. 2/

A wholesale produce dealer or dealer at wholesale includes any person who buys produce 3/ in wholesale lots for resale; any truck farmer who buys in wholesale lots for resale; any broker or agent who deals in produce for a commission or fee; and any person engaged in the business of a cannery, food manufacturer or processor, and who purchases produce as a part of such business. 4/

The term does not include a truck owner or operator who transports produce, but who does not purchase or sell produce; certain marketing cooperatives; cash purchasers of fresh fruits or vegetables; a dealer in canned or packaged products which are no longer deemed perishable; and retail merchants purchasing directly from farmers in amounts which, in the aggregate, do not exceed \$500 per month. 5/

Any person damaged by any breach of the conditions of a bond can enter

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1/ Minn. Stat. § 27.001 (1976).

2/ Minn. Stat. § 27.03 (1976). The purpose is to protect the farmer in his dealings with wholesale dealers. State v. Marcus, 210 Minn. 576, 299 N.W. 241 (1941). See Minn. Stat. §§ 27.04, .95 (1976). But see Minn. Stat. § 28A.06 (1976).

3/ "Produce" includes perishable fresh fruits and vegetables, milk and cream and their products, poultry and poultry products, wool and perishable unmatured feedstuffs. Minn. Stat. § 27.01(2) (1976).

4/ Minn. Stat. § 21.01(8) (1976).

5/ Id.

a complaint with the Commissioner. 6/ The Commissioner will investigate the charges and, unless both parties waive their right to a hearing, have the matter heard as a contested case (pursuant to ch. 15). 7/

The Commissioner has authority to establish grades on all produce and to provide for inspecting and grading produce subject to sale. 8/ Certificates of inspection showing the grade, quality and condition of the produce will be issued, and a fee collected for such. 9/ Persons desiring an inspection can apply to the Commissioner for the inspection. 10/

A violation of the provisions of the law relating to wholesale produce dealers is a misdemeanor, and may result in suspension or revocation of a license, in some circumstances without a hearing. 11/ Some of the specific acts forbidden are operating as a dealer at wholesale without a license; making false statements as to grade, condition, quality or quantity of produce received; refusing to accept a shipment of the kind and quality ordered; failing to account for produce, or to comply with terms of a contract entered into for the purchase or sale of produce; 12/ purchase for one's own use of produce received on consignment without the consent of the consignor; issuing a false market quotation or cancelling a quotation during the period advertised; increasing the sales charge on produce shipped by means of a fictitious sale; and receiving out-of-state produce and giving the purchaser

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6/ Minn. Stat. § 27.06 (1976). Where a bond is filed by a person not required to supply such a bond, the surety is still obligated to fulfill the conditions of the bond. See National Sur. Corp. v. Schwandt, 279 Minn. 444, 157 N.W. 2d 506 (1968).

7/ Minn. Stat. § 27.06 (1976).

8/ Minn. Stat. § 27.07 (1926).

9/ Id. Certificates of inspection are prama facie evidence of the grade quality and condition of the produce. Id.

10/ Minn. Stat. §§ 27.07, .09 (1976).

11/ Minn. Stat. § 27.19 (1976).

12/ This is one of the few instances in the law, at least to the author's knowledge, where failing to fulfill the terms of a contract can result in a criminal penalty.



the impression that it is of Minnesota origin. 13/

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13/ Minn. Stat. § 27.19 (1976).

## L. Cold Storage

A cold storage warehouse cannot be operated unless licensed by the Commission. 1/ A cold storage warehouse is every place other than an individual locker that is cooled and in which articles of food are placed and held for 30 days or more. 2/ The cold storage warehouse operator must keep accurate records of the articles of food received in and withdrawn, and must submit a monthly report to the Commissioner. 3/

Cold storage warehouses are inspected by the Commissioner. 4/ Food entering the facility must be in a pure and wholesome condition. 5/ Each article of food must be marked, either on the container in which it is enclosed or upon the article of food itself, with a lot number. 6/

Food cannot, except with the consent of the Commissioner, be left in a cold storage warehouse for more than 12 months. 7/ Food cannot be withdrawn for the purpose of placing it on the market for sale and then returned to cold storage. 8/

A violation of the provisions of the law relating to cold storage is a gross misdemeanor. 9/

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1/ Minn. Stat. § 28A.04(1) (1976).

2/ Minn. Stat. § 28.01(3) (1976). The term does not include refrigerated cars used solely for transportation, nor does it include the ice boxes of retail food establishments, private homes, hotels or restaurants. Id. An "article of food" is an article used for, entered into the consumption of, or used or intended for use in the preparation of food, drink, confectionary or condiment for either human or animal consumption. Minn. Stat. § 28.01(4) (1976).

3/ Minn. Stat. § 28.04 (1976).

4/ Minn. Stat. § 28.05 (1976).

5/ Minn. Stat. § 28.06 (1976).

6/ Minn. Stat. § 28.07 (1976).

7/ Minn. Stat. § 28.08 (1976). If the owner fails or refuses to remove the food, it may be sold under a procedure specified by the Commissioner. Id. The Commissioner may also shorten this period of time if market conditions warrant such. Minn. Stat. § 28.09 (1976).

8/ Minn. Stat. § 28.12 (1976).

9/ Minn. Stat. § 28.15 (1976).

M. Other

There are other less comprehensive provisions in the Minnesota Statutes which fall under the heading of food law. Two of these are discussed in the following.

1. Registration of a Product Name

Manufacturers of beer or other beverages, milk cream, ice cream or butter sold in a receptacle with a mark on it can register the mark. <sup>1/</sup> The fee is \$10, and registration is prima facie evidence of adoption of such name or mark. <sup>2/</sup> After registration, it is unlawful for another person to use a receptacle bearing that name or mark without the registrant's consent. <sup>3/</sup>

2. Vending Machine Inspections

The State Board of Health is responsible for inspecting cup vending machines and similar dispensing devices where food or beverages are dispensed for sale to the public. <sup>4/</sup> Licensing, however, is done by the Department of Agriculture. <sup>5/</sup>

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<sup>1/</sup> Minn. Stat. § 509.01 (1976).

<sup>2/</sup> Id.

<sup>3/</sup> Minn. Stat. § 509.02 (1976).

<sup>4/</sup> Minn. Stat. § 144.075 (1976).

<sup>5/</sup> See Minn. Stat. §§ 28A.04, .09 (1976).

### VIII. Restaurants

Restaurants and places of refreshment must, annually, procure a license from the State Board of Health. 1/ One license is sufficient for more than one restaurant or places of refreshment conducted on the same premises if under the same management. 2/

A restaurant is defined in the statutes as a place where meals or lunches are served or prepared. 3/ A place of refreshment is defined as every place where confectionary, ice cream or drinks are made, sold or served. 4/ Specifically excluded from either definition are general merchandise stores, grocery stores, oil stations, cigar stands, confectionary stores and drug stores which do not provide meals, lunches, lodging, fountain, bar, booth or table service. 5/

The State Hotel Inspector is responsible for assisting both the Department of Agriculture and the State Board of Health in regulating restaurants and places of refreshment. 6/ He keeps a set of books for public use and inspection showing the condition of restaurants and places of refreshment, the name of the owner or manager, and the sanitary condition of the establishment. 7/ He must inspect every restaurant and place of refreshment at least annually, and for such purpose, he has the right to access any time

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1/ Minn. Stat. § 157.03 (1976). Note that vending machine operators are licensed by the Department of Agriculture pursuant to ch. 28A. License must be posted. Minn. Stat. § 157.12 (1976).

2/ Minn. Stat. § 157.03 (1976).

3/ Minn. Stat. § 157.01 (1976). Whether a particular establishment is a "restaurant" is a question of fact to be determined by the governing body of a municipality. Op. Atty. Gen., 217f-2, Sept. 4, 1959.

4/ Minn. Stat. § 157.01 (1976).

5/ Id.

6/ Minn. Stat. § 157.02 (1976).

7/ Id.

during which business is being conducted. 8/ The hotel inspector can revoke a license of an establishment which is unclean or filthy and such place will be immediately closed. 9/ An alteration ordered by the hotel inspector is to be paid for by the owner, not the lessee. 10/

Restaurants and places of refreshment must be properly plumbed, lighted and ventilated, and outside windows must be screened. 11/ Dim lighting in a cocktail lounge where a patron tripped and fell has been held to be sufficient to allow a jury to find creation of a dangerous condition which constituted negligence. 12/ The failure to light a stairway to the restroom was determined to be the proximate cause of injuries sustained by a patron in a fall down those stairs. 13/

Effective measures must be taken to eliminate vermin infestation. 14/ All tables, table linens, chairs and other furniture, all hangings, draperies, curtains, carpets and floors must be kept in good repair and in clean condition. 15/

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8/ Minn. Stat. § 157.04 (1976). Inspections under the sanitary food law by Department of Agriculture, while overlapping duties of inspection conferred upon Department of Health, are not necessarily in conflict therewith. Op. Atty. Gen., 135-A-6, Nov. 29, 1948. Health inspectors also have certain authority to enter buildings reasonably suspected of being the cause of a preventable disease. See Minn. Stat. § 145.04 (1976). Dept. of Natural Resources has authority to inspect for wild game. Minn. Stat. § 97.50(3) (1976).

9/ Minn. Stat. § 157.08 (1976).

10/ Minn. Stat. § 157.13 (1976).

11/ Minn. Stat. § 157.05 (1976). But note that back in 1935, the Attorney General stated that it was not mandatory for a restaurant to furnish toilet facilities. Op. Atty. Gen., 335-H, Nov. 5, 1935.

12/ Smith v. Kahler Corp., Inc., 297 Minn 272, 211 N.W. 2d 146 (1973).

13/ Iverson v. Quam, 226 Minn. 290, 32 N.W. 2d 596 (1948).

14/ Id.

The requirements of chapter 157 do not apply to buildings primarily used for religious worship or to buildings owned or used by a college or university. <sup>16/</sup> Businesses licensed under chapter 28A are exempt from the license requirements of chapter 157. <sup>17/</sup>

Cities also have the authority, by ordinance, to license and regulate restaurants and public eating places. <sup>18/</sup> No governmental subdivision can, however, impose a license requirement upon a "restaurant" where its purpose is solely to provide meals for a limited period of one week at a fair conducted by a county agricultural society - although such a business must comply with sanitation and public health ordinances. <sup>19/</sup> But a concession offering food for sale at a fair or local civic festival must obtain a permit from the State Board of Health (no charge). <sup>20/</sup>

Any eating establishment serving meat which has filler or meat substitute added must clearly and predominantly indicate on its menu or bill of fare the meat entrees that contain filler or meat substitute. <sup>21/</sup> Restaurants cannot prepare or serve horsemeat unless a sign is posted in a conspicuous place both inside and outside of the building reading "horse meat served here" and unless the same words are printed or typed on the menu. <sup>22/</sup> If a restaurant serves margarine, it must insure that each separate serving is covered by a sanitary paper or patty divider upon which is printed, in ten point boldface capital plain Gothic letters, the word "margarine". <sup>23/</sup>

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<sup>16/</sup> Minn. Stat. § 157.14 (1976).

<sup>17/</sup> Id.

<sup>18/</sup> See Minn. Stat. § 412.221(30) (1976).

<sup>19/</sup> See Minn. Stat. § 38.161(1) (1976).

<sup>20/</sup> Minn. Stat. § 38.162 (1976).

<sup>21/</sup> Minn. Stat. § 31.633 (1976).

<sup>22/</sup> Minn. Stat. § 31.161(2) (1976).

<sup>23/</sup> Minn. Stat. § 33.111 (1976).

Cities may, upon petition of 50% of the owners of real estate in a district, prohibit erection or alteration of any building used as a restaurant or eating house. 24/ Any building erected or altered in violation of such an ordinance is deemed a nuisance, and may be abated or enjoined by suit brought by the city or by an interested owner within the district. 25/

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24/ Minn. Stat. § 462.12 (1976).

25/ Minn. Stat. § 462.17 (1976).

## IX. Environment

Water pollution from 'non-point' agricultural sources is discussed in chapter I of this outline. This chapter is broken down into four major topics: environmental rights; solid waste disposal; noise pollution; and air pollution of grain handling facilities.

### A. Environmental Rights

The purpose of the Minnesota Environmental Rights Act <sup>1/</sup> is to protect the air, water, land and other natural resources in the state from pollution or destruction. <sup>2/</sup> The Act has been used to limit the power of a county to condemn land for a public highway <sup>3/</sup> and to protect a lake which was overcrowded and which had inadequate sanitary facilities. <sup>4/</sup>

The Act allows any "person" to bring an action for declaratory or equitable relief against any "person" for protection of the air, water or land from pollution, impairment or destruction. <sup>5/</sup> The statutory definition of "person" excludes a family farm, a family farm corporation or a bona fide farmer corporation. <sup>6/</sup> This definition of person does not mean that a farmer cannot bring an action under the Rights Act, <sup>7/</sup> but it does appear to limit immunity from suit to farming or farm-related activity. Thus, in a proceeding to enjoin the county from building a road across marsh land, the possibility that a farmer might attempt to drain the marsh for farming was not relevant where the county's proposed highway construction adversely affected the

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<sup>1/</sup> Minn. Stat. §§ 116B.01-.13 (1976).

<sup>2/</sup> Minn. Stat. § 116B.01 (1976).

<sup>3/</sup> Freeborn County v. Bryson, 297 Minn. 218, 21D N.W. 2d 290 (1973).

<sup>4/</sup> Corwine v. Crow Wing County, 244 N.W. 2d 482 (1976).

<sup>5/</sup> Minn. Stat. § 116B.03(1) (1976).

<sup>6/</sup> Minn. Stat. § 116B.02(2) (1976). The terms family farm, family farm corporation and bona fide farmer corporation are all defined in § 116B.02.

<sup>7/</sup> See Ludwig v. Bemidji, 298 Minn. 27, 212 N.W. 2d 876 (1973).



marsh land in a different manner. 8/

Another significant aspect of the definitions in the Rights Act is that "pollution, impairment or destruction" is defined as not including violations of rules solely because of the introduction of an odor into the air. 9/ This means that enjoining an activity which is objectionable solely because of its noxious odor (e.g. pig farm) will continue to require a cause of action in nuisance. 10/

An environmental impact statement (EIS) is required for any major private or governmental action of more than local significance where there is potential for significant environmental effects. 11/ An EIS may also be required when a petition of 500 or more persons is filed. 12/

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8/ Freeborn County, supra note 3 (county was "person" against whom injunctive relief sought).

9/ Minn. Stat. § 116B.02(5) (1976).

10/ See chapter I of this outline for a discussion of nuisance.

11/ Minn. Stat. § 116D.04(1) (1976).

12/ Minn. Stat. § 116D.04(3) (1976).

13/ See Minn. Stat. § 116.07(2) (1976).

14/ Minn. Stat. § 116.07(4) (1976).

## B. Solid Waste Disposal

The Minnesota Pollution Control Agency (PCA) has adopted standards for control of the collection, transportation, and disposal of solid waste to prevent water, air and land pollution. <sup>13/</sup> These standards are given the force of law. <sup>14/</sup> In adopting the standards, PCA considered differing population density, topography, soils and geology, climate, transportation, and land use. <sup>15/</sup>

In defining terms used in its standards, the PCA has defined two terms in a manner significant to agriculture. "Hazardous infectious waste" is defined as waste from the diagnosis, care or treatment of a person or animal who was or may have been exposed to contagious or infectious disease. <sup>16/</sup> This definition has implications both for the veterinarian and for the animal raiser. "Solid waste" is defined as discarded solid material except animal waste used as fertilizer including materials resulting from industrial, commercial and agricultural operations. <sup>17/</sup> The term does not include dissolved wastes in irrigation return flows or other common water pollutants. <sup>18/</sup> This definition is significant because most of the operative language in the standards utilizes the concept of solid waste.

The owner of premises is responsible for storing and transporting solid waste to a solid waste disposal site. <sup>19/</sup> In other words, farmers are responsible for getting any item within the definition of solid waste to a solid waste disposal site. This includes dead animals which the landfill must bury with a certain amount of dirt and within a certain time. <sup>20/</sup>

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<sup>13/</sup> See Minn. Stat. § 116.07(2) (1976).

<sup>14/</sup> Minn. Stat. § 116.07(4) (1976).

<sup>15/</sup> See Minn. Stat. § 116.07(2) (1976).

<sup>16/</sup> Minn. Reg. PCA § SW1(12).

<sup>17/</sup> Minn. Reg. PCA § SW1(30).

<sup>18/</sup> Id.

<sup>19/</sup> Minn. Reg. PCA §§ SW2,3.

<sup>20/</sup> See Minn. Reg. PCA § SW6.

After a hearing, the PCA can grant variances from its regulations or standards. 21/ No hearing is required, however, for variances from feed lot regulations and from standards relating to family farm and family farm corporation buildings used for raising livestock, poultry and other animals in which the animals and waste are confined. 22/

A county board can, with PCA approval, assume responsibility for processing applications for PCA required permits for livestock feedlots, poultry lots and other animal lots. 23/ Processing includes (i) distribution of application forms; (ii) receipt and examination of completed applications and certification to PCA that it will comply or respects in which variance would be required; and (iii) assisting applicants. 24/ It may also include issuing, denying, modifying and imposing conditions upon, or revoking permits subject to PCA review. 25/

Unlike operators of other facilities for disposal of solid waste operated under permit, the animal feedlot operator need not obtain a certificate of competence to operate. 26/

Metropolitan councils also have some solid waste disposal authority. Solid waste is defined in this grant of authority in the same manner it is defined above. 27/ The Metro Council reviews county solid waste reports and and solid waste facility permit applications. 28/ Metropolitan counties are required to prepare a solid and hazardous waste master plan, and they are

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21/ Minn. Stat. § 116.07(5) (1976).

22/ Id.

23/ Minn. Stat. § 116.07(7) (1976).

24/ Id.

25/ Id.

26/ Minn. Stat. § 116.41(3) (1976).

27/ Minn. Stat. § 473.121(27) (1976).

28/ Minn. Stat. § 473.181(4) (1976).

empowered to pass ordinances regulating collection of solid waste. 29/

Any person who unlawfully disposes of garbage, rubbish, offal, or the body of a dead animal upon a public highway, public waters, public lands, or, without consent of the owner, private lands or waters is guilty of a misdemeanor. 30/

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29/ Minn. Stat. §§ 473.803(1), 811(5) (1976).

30/ Minn. Stat. § 609.68 (1976).

### C. Noise Pollution

PCA has also made some attempt at noise regulation. Activities are classified according to acceptable sound levels for speech, sleep, annoyance and hearing conservation. 31/ Agriculture and related activities and food manufacturing fall into Noise Area Classification - 3 (NAC-3). 32/ Undeveloped land area is NAC-4. Standards are set for a NAC based upon human response to sound, not just according to decibels.

It is improper to sell or operate a motor vehicle which violates the sound regulations. 33/ It is also improper to modify or sell parts which will amplify sound. 34/ Motor vehicle is defined to include any self-propelled vehicle (except railroad trains) and any vehicle propelled or drawn by a self-propelled vehicle. 35/

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31/ See Minn. Reg. PCA § NPC 2.

32/ Id.

33/ See Minn. Reg. PCA § NPC 4.

34/ Id.

35/ Id.

#### D. Air Pollution of Grain Handling Facilities

This area is also regulated by PCA regulation. <sup>36/</sup> The regulation sets separate standards of performance for all grain handling facilities, existing grain handling facilities and new grain handling facilities. A grain handling facility is defined as an emission facility used in the process of handling, storing, processing or drying grain or seed.

All grain handling facilities are required by the regulation to follow and maintain good operating and housekeeping practices at all times. This standard gives absolutely no guidance to grain handling facilities attempting to ensure that they are in compliance with applicable regulations. Fortunately, the standards for existing and new grain handling facilities are more specific.

Existing grain facilities in the Minneapolis-St. Paul Air Quality Control Region and those in cities with a population of 5000 or more must apply induced draft to all sources of particle emissions and must convey these emissions through control equipment which has a particulate collection efficiency of not less than 99% by weight. For facilities in cities of 2500-5000 this percentage is reduced to 85% if the grain throughput of the facility is less than 4 million bushels per year. Other facilities are required to meet the 85% test if their throughput exceeds 4 million bushels, but are not required to apply induced draft if the throughput is less than 4 million bushels.

The standards are stricter for new grain handling facilities. All such facilities must apply induced draft unless they are located outside of a city and have a throughput of less than 2 million bushels per year.

The regulation does not apply to grain dryers which meet certain

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<sup>36/</sup> Minn. Reg. PCA § APC 29. Applicable emission standards are described in APC 5.

requirements. A dryer is within the exception if it is located in a protected area away from residences and places frequented by the public and operation of the dryer does not create a public nuisance. To be within the exception, the dryer must also have perforations in the column dryer screen which do not exceed  $3/32$  inches in diameter and the emissions from a rack dryer must pass through a 50 mesh screen enclosure before discharge into the atmosphere.

No grain handling facility can be operated in such a manner as to create a public nuisance. If the PCA Director determines that a facility does create a nuisance, he may require the owner or operator to take such measures as are necessary to eliminate the nuisance.

X. Transportation

This chapter discusses some of the very specific statutory law regulating railroad transportation and motor vehicle transportation of food and farm products. Section C of this chapter discusses the regulation of rail transportation of hay and straw.



A. Railroad Transportation

Railway companies are required to paint lines on the inside of their cars used for carrying grain, indicating the height to which various kinds of grain may be loaded, and cars cannot be loaded above the line appropriate for the type of grain hauled. <sup>1/</sup> Any person loading such a car must state in the bill of lading that the car is loaded to or below the line, and an agent of the railway company must verify this statement. <sup>2/</sup> If the railway company fails to paint lines in its cars, it cannot collect any charge for transportation above the regular tariff rates for carload lots. <sup>3/</sup>

Every carrier transporting grain must give the shipper on request a receipt for the number of pounds of grain received and must deliver such quantity to the consigner or connecting carrier (less a loss for transportation of 60 pounds per car). <sup>4/</sup> A railroad company cannot make any distinction in charges against a person shipping grain otherwise than through an elevator. <sup>5/</sup>

Railroad right of way can be used for public elevators, selling stations, and weighing scales upon payment of reasonable compensation. <sup>6/</sup> If agreement cannot be reached with the railroad, a complaint can be filed with the Public Service Commission. <sup>7/</sup> A copy of this complaint must be served on

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<sup>1/</sup> Minn. Stat. § 235.04 (1976).

<sup>2/</sup> Id. It is a misdemeanor to load any car above the appropriate line or for a railway company agent to sign a bill of lading on an overloaded car. Id.

<sup>3/</sup> Minn. Stat. § 235.04 (1976).

<sup>4/</sup> Minn. Stat. § 235.05 (1976).

<sup>5/</sup> Minn. Stat. § 235.06 (1976).

<sup>6/</sup> Minn. Stat. § 230.09 (1976).

<sup>7/</sup> Minn. Stat. § 230.10 (1976).

the railroad; an answer is allowed, and a hearing will be held. <sup>8/</sup> An order may be made establishing reasonable compensation. <sup>9/</sup>

It is not unlawful for a common carrier to give free or reduced cost transportation for livestock used for breeding purposes, caretakers of livestock, poultry, vegetables, and fruit to and from point of delivery. <sup>10/</sup>

Common carriers have a duty to furnish suitable care for the transportation of livestock and to transport livestock of different kinds in the same car at the option of the shipper. <sup>11/</sup> Livestock billed to a terminal within 20 miles must be delivered within five hours after arrival at the terminal; if billed to a terminal within 10 miles, they must be delivered with three hours after arrival. <sup>12/</sup> The railroad must provide free transportation in connection with livestock shipments in carload lots--one person for the first car and an additional person for each additional four carloads--in a caboose or other suitable car while going and first class when returning. <sup>13/</sup>

The Public Service Commission has the authority, upon petition and hearing, to fix rates for carrying livestock to St. Paul and to prescribe rates for feeding cattle applicable to out movement from terminal markets. <sup>14/</sup> The Commissioner of the Department of Transportation prescribes rules for

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<sup>8/</sup> Id.

<sup>9/</sup> Minn. Stat. § 230.11 (1976).

<sup>10/</sup> Minn. Stat. § 218.021(2) (1976). Common carrier, as used in chapter 218, means public railroad companies. Minn. Stat. § 218.011(2) (1976).

<sup>11/</sup> Minn. Stat. § 218.031(11) (1976).

<sup>12/</sup> Id.

<sup>13/</sup> Id.

<sup>14/</sup> Minn. Stat. § 218.041(2)(4), (5) (1976).

distribution of cars at stations for shippers of livestock and farm products and prescribes speed and conditions of cars of livestock moved intrastate. 15/ He also appoints weighers at public stockyards. 16/ The Commissioner may require the installation and maintenance of stock scales at all stockyards, which scales shall be for free use to patrons shipping livestock through the stockyards. 17/

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15/ Minn. Stat. § 218.041(3)(5), (7) (1976).

16/ Minn. Stat. § 218.041(4)(4) (1976).

17/ Minn. Stat. § 218.041(5)(3) (1976).

## B. Carriers

All operators of motor carriers must have a certificate or permit. <sup>1/</sup>  
All motor carriers must have a permit. <sup>2/</sup> Certain carriers are exempt  
from the requirements of chapter 221. <sup>3/</sup> The following are "exempt  
carriers":

1. A person engaged in farming or in transporting farm products within an area having a 25 mile radius from his home post office;
2. A person making less than six trips per year beyond the 25 mile radius from his home post office and such person is engaged in farming as his primary means of livelihood and actually residing on a farm; <sup>4/</sup>
3. A person engaged in agricultural pursuits who uses a truck for transporting fresh vegetables;
5. A person engaged exclusively in transporting potatoes, sugar beets, wild rice, or rutabagas from the field to the first place of delivery;
6. Manufacturers, producers, dealers, or distributors who, in the pursuit of their own business, own and use trucks for transporting their own products; and
7. A person engaged in the delivery or spreading of agricultural lime.

It is unlawful to operate a commercial truck on the highways of Minnesota within 35 miles of a first class city from 9:00 a.m. until midnight on Sundays and holidays from Memorial Day to the second Sunday in September. <sup>5/</sup>

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<sup>1/</sup> Minn. Stat. § 221.021 (1976).

<sup>2/</sup> Minn. Stat. § 221.111 (1976). Except for livestock carrier permits, these permits are assignable. Minn. Stat. § 221.151(1) (1976).

<sup>3/</sup> Minn. Stat. § 221.011(22) (1976).

<sup>4/</sup> His trucks must be licensed under section 168.013(1)(4a) to qualify within this exception.

<sup>5/</sup> Minn. Stat. § 221.191 (1976).

Exceptions are made for farm trucks, vehicles used to transport livestock (with or without loads), and vehicles used in transporting certain food products. 6/

"Livestock carriers" are subject to certain specific laws. A person desiring to operate as a livestock carrier must file a petition with the Commissioner specifying the kind of permit desired and certain other information. 7/ The Commissioner will issue the permit if he finds the petitioner in compliance with the laws, that the petitioner's vehicles meet prescribed safety standards, and that the petitioner is fit and able to conduct the proposed operations. 8/ Livestock carrier permits are not assignable. 9/ It is unlawful to transport for hire food for human consumption in any motor vehicle used to transport livestock until it has been cleaned. 10/

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6/ Id.

7/ Minn. Stat. § 221.121(3) (1976).

8/ Id.

9/ Minn. Stat. § 221.151(1) (1976).

10/ Minn. Stat. § 221.241 (1976).

C. Public Hay Tracks

It is the duty of the Department of Public Service to supervise the hay and straw interests of Minnesota; to supervise the handling, weighing, inspecting, and storage of hay and straw; to investigate complaints of fraud or oppression in the hay and straw; to investigate complaints of fraud or oppression in the hay or straw trade and correct the same; and to promulgate regulations relating to hay and straw and the management of public hay tracks. <sup>1/</sup> Each year the Department must establish a grade for all kinds of hay and straw handled in the state, which grades are known as "Minnesota grades" of hay or straw. <sup>2/</sup>

All hay or straw shipped to terminal points, <sup>3/</sup> unless the consignor directs otherwise, must be brought to a public hay track to be weighed and inspected. <sup>4/</sup> The Department of Public Service has the responsibility for designating convenient places on railroads entering terminal points as public hay tracks, and for adopting rules for weighing and inspecting hay or straw at such terminal points. <sup>5/</sup>

After hay has been unloaded, the carrier must return the car free of switching charge to scales under control of the state for weighing. <sup>6/</sup> If the car is reconsigned, however, the weight may be had by use of a marked stencil weight on the car. <sup>7/</sup>

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<sup>1/</sup> Minn. Stat. § 229.02(1) (1976).

<sup>2/</sup> Minn. Stat. § 229.02(2) (1976).

<sup>3/</sup> Terminal points are the cities of St. Paul, Minneapolis, Duluth, and South St. Paul. Minn. Stat. § 229.01(1) (1976).

<sup>4/</sup> Minn. Stat. § 229.04 (1976).

<sup>5/</sup> Minn. Stat. § 229.01(2)(3) (1976).

<sup>6/</sup> Minn. Stat. § 229.05 (1976).

<sup>7/</sup> Id.

It is the duty of the carrier transporting hay to the terminal point to construct and maintain suitable scales. 8/ They will be inspected at the request of any person interested in any hay or straw weighed thereon. 9/

The Department appoints and supervises weighers. 10/ If an interested person is dissatisfied with an inspection, he may apply to the Department for reinspection. 11/ Provision is also made for a final appeal. 12/

Each weigher must post a \$5000 bond with the state. 13/ Obstructing a weigher's access to his scale can result in a \$100 fine. 14/ The Department fixes the rate of compensation paid weighers and inspectors, and fixes rates for weighing and a manner of collection in order to produce revenue to meet the expenses of weighing and inspecting. 15/

Weighers cannot have any interest in the handling, storing, shipping, purchasing, or selling of hay or straw. 16/ He can be removed upon complaint supported by satisfactory proof of a violation of any governing rules, incompetence, or commission of an improper official act. 17/

Charges for weighing constitute a lien on the hay and must be paid by the carrier in possession at the time of the weighing. 18/

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8/ Minn. Stat. § 229.06 (1976). All such scales are exempt from the jurisdiction of sealers of weights and measures. Id.

9/ Minn. Stat. § 229.06 (1976). The owner pays the inspection cost if the scales are incorrect; if correct, the requestor pays. Id. If found incorrect, they cannot be used until corrected. Id.

10/ Minn. Stat. § 229.07 (1976).

11/ Id. See Minn. Stat. § 229.15 (1976).

12/ Id.

13/ Minn. Stat. § 229.08 (1976).

14/ Id.

15/ Minn. Stat. § 229.10 (1976).

16/ Minn. Stat. § 229.11 (1976).

17/ Minn. Stat. § 229.12 (1976).

18/ Minn. Stat. § 229.13 (1976).

The duty of the inspector is to inspect the hay or straw and issue a certificate of inspection, which certificate is conclusive as to the grade of such hay or straw. 19/ Weighers are required to properly weigh the hay or straw, and to keep a record of weighing which contains account for all hay or straw weighed, giving weight, number of cars, initial letter of car weighed, date of weighing, and contents of the car. 20/ Certificates of weighers are prima facie evidence of what is contained therein and of the fact that a sale and purchase of such hay was made. 21/

Several penalties are provided for violations of chapter 229. A carrier failing to comply with any of the provisions of the chapter is subject to a penalty of \$25 to be recovered by the aggrieved shipper. 22/ A person impersonating a weigher or inspector is guilty of a misdemeanor. 23/ A weigher guilty of neglect of accepting money, and any person improperly influencing a weigher, is guilty of a misdemeanor. 24/

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19/ Minn. Stat. § 229.14 (1976).  
20/ Minn. Stat. § 229.16 (1976).  
21/ Minn. Stat. § 229.17 (1976).  
22/ Minn. Stat. § 229.18 (1976).  
23/ Minn. Stat. § 229.19 (1976).  
24/ Minn. Stat. § 229.20 (1976).



## XI. Government and Agriculture

This outline cannot, and does not, attempt to discuss all legal aspects of the relationship between agriculture and government. Some aspects of government and agriculture are, however, more directly related than others. This chapter discusses those areas of the governmental-agricultural relationship which the legislature has seen fit to legislate.

The topics discussed in this chapter are: (A) education, (B) county extension programs, (C) the Commissioner of Agriculture, (D) state and county agricultural societies, (E) agricultural assistance and development, and (F) agricultural leases by state parks.

A. Agriculture and Education

Agriculture and education is itself a broad topic. The following discussion is limited to some specific statutory laws which relate to this general topic. This is not intended to be a comprehensive discussion of the topic of agriculture and education.

1. Land for Agriculture Courses

The board of a duly organized school district in which agricultural instruction is provided is authorized to purchase or acquire by condemnation a tract within or without the district to be used for instruction, experimentation, and demonstration in agriculture. <sup>1/</sup> This does not give the board authority to rent farmland on a share basis. <sup>2/</sup>

2. Aid to Agriculture Students

The State of Minnesota pays the University of Minnesota up to \$7 per month per pupil for tuition and certain fees plus an additional \$5.50 per month for transportation or board for students who have completed the eighth grade but not high school, who are 21 or under, and who are attending state schools of agriculture. <sup>3/</sup> The University distributes these funds to each of the state schools of agriculture in proportion to the number of eligible pupils. <sup>4/</sup>

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<sup>1/</sup> Minn. Stat. § 123.64 (1976); In re Condemnation of Land in St. Louis, 124 Minn. 271, 144 N.W. 960 (1914).

<sup>2/</sup> Op. Atty. Gen., 622-E, December 3, 1953.

<sup>3/</sup> Minn. Stat. § 124.23 (1976).

<sup>4/</sup> Id.

### 3. School Attendance

Every child between the ages of 7 and 16 must, with certain limited exceptions, attend school. <sup>5/</sup> Students in regular attendance at the University of Minnesota Northwest School of Agriculture in Crookston and at the University of Minnesota Southern School of Agriculture in Waseca are excused from attendance between April 1 and October 1. <sup>6/</sup> Children may not be excused from attending school for such general agricultural purposes as harvesting sugar beets. <sup>7/</sup>

If a farm has land in more than one school district, a child living on that farm may attend school in either district, but if he attends in the district where he is not a resident, he must have approval of the Commissioner of Education. <sup>8/</sup> The farm must have at least 40 acres in the district in which the child wishes to attend school, must be owned and operated as a single farm, and such a tract must be no more than two miles from the tract on which the pupil resides. <sup>9/</sup> State aid goes to the school where the pupil attends, and that school may provide the pupil with transportation. <sup>10/</sup>

If a person owns land within a school district and pays taxes on that land, he is entitled to all benefits of the school in respect to elementary pupils, subject to reasonable terms of tuition and transportation. <sup>11/</sup> He

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<sup>5/</sup> Minn. Stat. § 120.10(1) (1976).

<sup>6/</sup> Minn. Stat. § 120.10(3) (1976).

<sup>7/</sup> Op. Atty. Gen., 169-B, October 21, 1924. The Attorney General also disallowed an application for excuse which stated that a child would be 16 in April, that he had missed a lot of school during the year, that he had no interest in school, and that they boy was needed to work at home. Op. Atty. Gen., 169-b, January 8, 1963.

<sup>8/</sup> Minn. Stat. § 120.065 (1976).

<sup>9/</sup> Id.

<sup>10/</sup> Id.

<sup>11/</sup> Minn. Stat. §§ 123.18(5), .39(5) (1976). Land owned includes joint interests but not partnership interests. Op. Atty. Gen., 166-A-B, November 13, 1961.

is entitled to have the amount of school taxes which he pays to such district applied to payment of these tuition and transportation fees. <sup>12/</sup>

4. School Lunch Aid

The State of Minnesota pays each school district 4¢ for each full paid student type "a" lunch served to students in the district. <sup>13/</sup> Type "A" lunch is not defined by the statute or by chapter 124.

The State Board of Education is authorized to accept provisions of the National School Lunch Act so that it can administer federal funds designed to provide nonprofit food service programs for children in service institutions. <sup>14/</sup> The legislature has also granted the governor power, at times when the legislature is not in session, to accept the provisions of any federal act providing assistance for school lunch programs, donated food programs, and nonprofit food service programs for children in service institutions. <sup>15/</sup>

5. Agricultural Information Dissemination

The University of Minnesota Agriculture Department retains powers and duties relating to obtaining and disseminating agricultural information and conducting agricultural research. <sup>16/</sup>

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<sup>12/</sup> Id.

<sup>13/</sup> Minn. Stat. § 124.646 (Supp. 1977). School districts are not paid for free or reduced price type "A" lunches. Id. School districts must apply to the State Department of Education for payment.

<sup>14/</sup> Minn. Stat. § 124.645 (1976).

<sup>15/</sup> Minn. Stat. § 124.62 (1976).

<sup>16/</sup> Minn. Stat. § 17.03(1) (1976).

B. County Extension

The County Commissioners in the state are authorized to spend money for county extension work in agriculture and home economics. <sup>1/</sup> Each county has an extension committee consisting of two of the country commissioners, the county auditor, and six other members. <sup>2/</sup> This committee, in cooperation with the Dean of the Institute of Agriculture at the University of Minnesota, prepares a budget for county extension work. <sup>3/</sup> This budget is submitted to the county commissioners for approval. <sup>4/</sup> The goal of county extension work is to improve agriculture and home economics and to improve the marketing of farm products. <sup>5/</sup>

The county extension committee annually formulates a program and employs persons known as county extension agents to put the program into operation. <sup>6/</sup> The county extension agent gives aid and advice to county residents in aiding and improving the business of agriculture or home economics. <sup>7/</sup>

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<sup>1/</sup> Minn. Stat. § 38.34 (1976); see Minn. Stat. § 38.36 (1976).

<sup>2/</sup> Minn. Stat. § 38.36 (1976).

<sup>3/</sup> Id.

<sup>4/</sup> Id.

<sup>5/</sup> Id.

<sup>6/</sup> Minn. Stat. § 38.37 (1976).

<sup>7/</sup> Minn. Stat. § 38.38 (1976).

C. The Commissioner of Agriculture

The State Department of Agriculture is headed by a commissioner who is appointed by the Governor (and approved by the Legislature) for a four year term which coincides with that of the Governor. <sup>1/</sup> The powers and duties of the Commissioner include (i) encouraging and promoting development of agricultural industry; (ii) investigating market conditions; (iii) assisting in forming cooperatives; (iv) collecting information and statistics including a farm census at least every two years; (v) cooperating with the federal government; and (vi) publishing information necessary to the welfare of agriculture. <sup>2/</sup>

It is also the duty of the Commissioner to prepare a standard farm accounting book and record designed to record receipts and expenditures of farming operations. <sup>3/</sup> The county agent annually sends a questionnaire to users of this form asking questions about the cost of production of farm products, amounts received from sales, and average profits. <sup>4/</sup> These are compiled and forwarded to the Commissioner for publication in an official bulletin. <sup>5/</sup>

The Commissioner can bring suit in his name to enforce the laws and may present all available information to proper law enforcement officials. <sup>6/</sup>

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<sup>1/</sup> Minn. Stat. § 17.01 (1976). The Commissioner is required to post a bond. Id. This bond, however, only covers loss from ministerial duties, not discretionary duties. Cook v. Tovaton, 200 Minn. 231, 274 N.W. 165 (1937).

<sup>2/</sup> Minn. Stat. § 17.03 (1976).

<sup>3/</sup> Minn. Stat. § 17.031 (1976).

<sup>4/</sup> Minn. Stat. § 17.032 (1976).

<sup>5/</sup> Id.

<sup>6/</sup> Minn. Stat. § 17.037 (1976).

<sup>7/</sup> Minn. Stat. § 17.07 (Supp. 1977).

The Commissioner must approve any expenditure to any agricultural association or society unless such organization is audited by a state official. <sup>7/</sup> He makes a biennial report (even numbered years) to the Governor and Legislature with recommendations on agriculture, food, and marketing. <sup>8/</sup> He also issues a report showing his Department's receipts and disbursements. <sup>9/</sup> He is empowered to promote marketing of Minnesota agricultural products by advertising and other appropriate activities. <sup>10/</sup>

The Commissioner is responsible for supervising the licensing and operation of special programs for certain agricultural products. Most recently the legislature gave the Commissioner the authority to operate a program for the harvesting and sale of wild ginseng. <sup>11/</sup> He has the power to set seasons and establish regulations necessary for the conservation of wild ginseng. <sup>12/</sup> This program is similar to the one for the harvesting of wild rice. The wild rice program was also recently amended by eliminating the licensing requirement for wild rice processors. <sup>13/</sup>

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<sup>8/</sup> Minn. Stat. § 17.10 (1976).

<sup>9/</sup> Id.

<sup>10/</sup> Minn. Stat. § 17.101 (1976).

<sup>11/</sup> Act of May 17, 1979, Ch. 94, 1979 Minn. Sess. Law Serv. 165 (West).

<sup>12/</sup> Id.

<sup>13/</sup> Act of May 17, 1979, Ch. 104, 1979 Minn Sess. Law Serv. 173 (West).

D. Agricultural Societies

The State Agricultural Society, public corporation, is responsible for managing the state fair grounds and using the grounds for such public purposes as the annual state fair and other exhibits and expositions of the resources of the State of Minnesota. 1/

Membership in this society consists of three delegates from each agricultural society in the state; one member from each county which does not have an agricultural society; honorary members elected by the society; and two delegates from each of many different specifically named association. 2/ Special rules are provided in the statutes for selecting the board of managers, meetings, vacancies, and determining existence of a quorum. 3/ Members are paid an annual honorarium of \$1,000. 4/

The secretary keeps a complete record of all proceedings of the Society and makes an annual report to the Governor. 5/ The Society's books are audited by the Legislative Auditor. 6/ The secretary must also prepare a monthly statement. 7/

The title of all property of the Society rests in the state in the name of the Society. 8/ Control of the state fair grounds is vested in the Society as a department of the state. 9/

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1/ Minn. Stat. § 37.01 (1976).

2/ Minn. Stat. § 37.03 (1976); see section 38.02 for qualification of an agricultural society.

3/ Minn. Stat. § 37.04 (1976).

4/ Minn. Stat. § 37.05 (1976).

5/ Minn. Stat. § 37.06 (1976).

6/ Id.

7/ Minn. Stat. § 37.07 (1976).

8/ Minn. Stat. § 37.13 (1976).

9/ Minn. Stat. § 37.14 (1976).



The Society can make rules for governing the fairgrounds and fair therein 10/ and can license and regulate shows on the fairgrounds. 11/ Performing without a license or in an indecent or immoral manner are misdemeanors. 12/

The Society can contract with its own name and buy and sell real estate. 13/ It may appoint special peace officers during the state fair 14/ and even hold court within the fairgrounds while the state fair is being held. 15/ Liquor cannot be sold within one-half mile of the state fairgrounds, and the governing board of the Society can, without warrant, seize and destroy any liquor found on the fairgrounds. 16/

Entering the fairgrounds during the annual fair without a ticket, or loitering with intent to do such, is a misdemeanor. 17/

During the annual fair and for 18 days preceeding the fair, it is unlawful to conduct a circus in any city or within six miles of any city of this state. 18/

County agricultural societies are governed by chapter 38 of the Minnesota statutes. Only one such society can be organized in any single county. 19/ These societies have the right to sue or be sued, to buy and sell real estate, and to adopt rules and regulations. 20/ It has jurisdiction and

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- 10/ Minn. Stat. § 37.16 (1976).
  - 11/ Minn. Stat. § 37.17 (1976).
  - 12/ Minn. Stat. § 37.18 (1976).
  - 13/ Minn. Stat. § 37.19 (1976).
  - 14/ Minn. Stat. § 37.20 (1976).
  - 15/ Minn. Stat. § 37.23 (1976).
  - 16/ Minn. Stat. §§ 37.21, .22 (1976).
  - 17/ Minn. Stat. § 37.25 (1976).
  - 18/ Minn. Stat. § 37.26 (1976).
  - 19/ Minn. Stat. § 38.01 (1976).
  - 20/ Id.

control of the grounds upon which its fairs are held, and may appoint special constables during a county fair. 21/

A county or district agricultural society is entitled to a pro rata share of money distributed by the state as long as it meets certain conditions such as having an annual fair, etc. 22/ Payments are based upon cash awards paid exhibitors according to the following scale: 100 percent of the first \$750 in premiums; 80 percent of the next \$750; 60 percent on the next \$750; and 40 percent on anything over \$2,250. 23/

Each county agricultural society must hold an annual meeting at which time the secretary and treasurer make their annual reports. 24/ The books of such a society are subject to examination by the Commissioner of Agriculture. 25/

Every county agricultural society has the right of eminent domain. 26/ It has authority to lease land from the county and construct improvements on such land. 27/ When county owned land used for fair purposes lies within a city, the land and buildings are exempt from zoning, building, and other ordinances. 28/ The county board's authority to condemn land for agricultural fairs, to make appropriations to fairs, to improve and erect structures for fairs, and other similar such powers are granted by section 375.18(9) of the Minnesota statutes.

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21/ Id. Or it may contract with the local sheriff.

22/ Minn. Stat. § 38.02(1) (Supp. 1977).

23/ Id. It may also receive up to \$1,000 from any city or town having a fair within or close to such city or town. Minn. Stat. § 38.12 (1976). Counties may appropriate up to \$5,000 annually for managing and \$7,500 annually for sites and buildings. Minn. Stat. §§ 38.14, .15 (1976); but see Minn. Stat. § 375.18(8) (1976).

24/ Minn. Stat. § 38.04 (Supp. 1977).

25/ Minn. Stat. § 38.13 (Supp. 1977).

26/ Minn. Stat. § 38.05 (1976).

27/ Minn. Stat. § 38.03 (1976).

28/ Minn. Stat. § 38.16 (1976).

Counties have authority for levying a tax for supporting county agricultural societies. 29/ Cities, towns, and school districts may make appropriations to aid if fairground improvements. 30/

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29/ Minn. Stat. §§ 38.17, .27, .28 (1976).

30/ Minn. Stat. § 38.18 (1976).

E. Agricultural Assistance, Development

County boards are required to appropriate money to maintain demonstration farms under supervision of the University of Minnesota Department of Agriculture. 1/ They may also appropriate money for experimental work on an experiment farm if designated as such by the state university Board of Regents. 2/ Either such farm is to be managed by a superintendent appointed by the county board. 3/

A county board may also appropriate money to aid a poultry association if it holds one annual poultry exhibit at which it pays premiums and may appropriate money to assist in the exhibit of county products at the state fair. 4/ If the money is appropriated for the latter of these two reasons, a resident of the county must be appointed to supervise the exhibit. 5/

Commissioners of counties with a population under 225,000 may appropriate up to 5¢ per capita (can't exceed \$25,000) to any incorporated organization which will use it in advertising, improving, and developing the economic and agricultural resources of the state. 6/

St. Louis County has authority to purchase excess war explosives for resale to land owners for use in cleaning and improving uncleared land. 7/

Counties are also empowered to make certain loans for purchase of feed and seed. 8/ This is discussed in chapter I of this outline.

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1/ Minn. Stat. § 395.01 (1976).

2/ Minn. Stat. § 395.02 (1976).

3/ Minn. Stat. § 395.03 (1976).

4/ Minn. Stat. §§ 395.035, .04 (1976).

5/ Minn. Stat. § 395.05 (1976). Such person must be bonded and must submit a detailed statement to the board of all expenditures. Minn. Stat. §§ 395.06, .07 (1976).

6/ Minn. Stat. § 395.08 (1976).

7/ Minn. Stat. § 395.09 (1976); see Minn. Stat. §§ 395.10-.12 (1976)

8/ See Minn. Stat. §§ 395.14-.24 (1976).

F. Agricultural Leases by State Parks

Cooperative farming leases on a sharecrop basis may be completed by state parks on land located within such parks with nearby farmers to provide needed park services, such as grassland restoration or development, weed control, and the provision of food plots, such as corn, for wildlife.

These leases may be entered into in lieu of any rental arrangement established in any other provision of the law. <sup>2/</sup>

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<sup>1/</sup> Minn. Stat. § 85.23 (Supp. 1977).

<sup>2/</sup> Id.

## XII. Other

A few statutes did not fit neatly within any of the preceding chapters of this outline. For that reason, they are discussed in the following brief sections.

### A. Contracts for Food for Institutions

The Commissioner of Public Welfare is empowered to contract with persons engaged in commercial canning or freezing of food products, under terms he believes to be in the best interests of the state, for seeding, fertilizing, harvesting, and preserving food products for consumption by institute inmates. <sup>1/</sup> The contract may provide for payment of the processor's services by a fractional share of the food processed. <sup>2/</sup> There is no requirement that the Commissioner advertise for bids. <sup>3/</sup>

### B. Practice of Law--Farm Journals

Prohibitions against the unlawful practice of law do not prohibit a regularly established farm journal or newspaper, devoted to general news, from publishing a department of legal questions and answers. <sup>4/</sup> The answer cannot be accompanied, preceded, or followed by any charge for the answer, cannot disclose the name of the maker of the answer, and cannot recommend or refer to anyone to furnish legal advice. <sup>5/</sup>

### C. Miller Exempt from Jury Duty

Minnesota law still provides an exemption from jury duty for "one miller to each grist mill." <sup>6/</sup>

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<sup>1/</sup> Minn. Stat. § 246.42 (1976).

<sup>2/</sup> Id.

<sup>3/</sup> Id.

<sup>4/</sup> Minn. Stat. § 481.02(3) (1976).

<sup>5/</sup> Id.

<sup>6/</sup> Minn. Stat. § 628.43 (1976).