

ICE CREAM

CHAPTER 159

(H. B. No. 106—Hamilton.)

SALE, ETC., OF ICE CREAM

An Act defining imitation ice cream, requiring the licensing of manufacturers, dealers and peddlers thereof, and prescribing penalties for violations of this act.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Any milk, cream, skim milk, buttermilk, condensed milk, evaporated milk, powdered milk, marshmallow or eggs, or any parts thereof, which is mixed with sugar, flavor or other substance, if made in imitation or semblance of ice cream, or calculated or intended to be sold as ice cream, or for ice cream, and weighing less than four and a quarter pounds avoirdupois per gallon, shall be for the purposes of this act known and designated as "imitation ice cream."

§ 2. It shall be unlawful for any person, firm or corporation, by himself, his or its agent or servant, or as agent of another, to manufacture, sell, exchange or offer for sale or have in possession with intent to sell or offer for sale or exchange, any imitation ice cream in this state without first having obtained a license therefor. Licenses for the manufacturing, retailing or peddling of imitation ice cream shall be granted and issued by the State Food Commissioner. Such license shall be an annual license. The license period shall begin January 1st of each year and all licenses shall terminate December 31st following the date of issuance unless sooner revoked.

§ 3. Any person, firm or corporation making application for a license to manufacture, sell or peddle imitation ice cream shall make such application upon a form prescribed by the State Food Commissioner and shall accompany such application with the complete formula of the article sought to be manufactured, sold or peddled. The State Food Commissioner shall refuse to grant such license whenever in his opinion such imitation ice cream is unfit for human consumption. Each application for license shall show the county in which the licensee seeks to do business, together with the location of the place of business, if the applicant is a manufacturer or retailer. The license shall be good only in the county for which it is issued and shall not be transferable. The State Food Commissioner may revoke any license for violation of any of the provisions of this act. No license shall be issued until the applicant has paid the fee hereinafter provided: Manufacturer, \$100.00; retail dealer, \$50.00; peddler, \$10.00. The term "retail dealer" shall be deemed to mean any person, firm or corporation operating a

store, stand or other place where imitation ice cream is sold to consumers. The term "peddler" shall mean any person selling or vending imitation ice cream direct to the consumer at any other place than at a store, stand or other fixed place of business. Each license shall cover but one manufacturer, retail dealer or peddler, and but one place of business for each manufacturer or retail dealer and one county for a peddler.

§ 4. All moneys received by the State Food Commissioner for licenses issued hereunder, shall be transmitted to the State Treasurer and by him credited to the State Regulatory Fund.

§ 5. Any person, firm or corporation selling imitation ice cream to consumers shall display a sign so placed or carried as to be easily read by the purchasers, which sign shall bear the words "imitation ice cream" in letters at least two inches in height and one inch in width.

§ 6. PENALTY.] Any person violating any provision of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall, for a first offense, be punished by a fine of not less than \$25.00 or more than \$100.00 and for the second and each subsequent offense by a fine of not less than \$100.00 nor more than \$500.00, or by imprisonment in the county jail for not less than ten or more than ninety days, or both such fine and imprisonment. The enforcement of the penal provisions of this act is enjoined upon every officer and official whose duty it is to enforce the laws of this state, and any such officer failing to enforce the same shall be subject to removal from office in the manner provided by law.

§ 7. And it is hereby declared that if any of the provisions of the act or any section thereof in any manner contravene the provisions of the constitution, the remaining provisions would have been enacted by this legislative assembly even though such provisions had been eliminated from the act. Hence, if any of the provisions are found to be violative of the constitution the remaining provisions shall not be affected by such invalidity, but shall remain in full force and effect.

§ 8. EMERGENCY CLAUSE.] An Emergency is hereby declared to exist; therefore this Act is hereby declared to be an Emergency measure and shall be in full force and effect from and after its passage and approval.

Approved March 7, 1931.