

No. 792, A.]

[Published July 27, 1933.]

CHAPTER 464.

AN ACT to amend subsection (3) of section 98.28 and paragraph (g) of subsection (10) of section 352.03, to create section 98.40 and subsections (10a), (10b) and (10c) of section 352.03 of the statutes, relating to the manufacturing and sale of ice cream, sherbets and frozen ices, and providing a penalty. *The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. Subsection (3) of section 98.28 and paragraph (g) of subsection (10) of section 352.03 of the statutes are amended to read: (98.28) (3) The terms "confectionery" and "confectionary establishment" as used in said sections are defined to be any room or place where candy, sweetmeats, or any other food products, of which sugar, molasses, chocolate, or nutmeats are the principal ingredients, are prepared, mixed, cooked, dried, formed, coated, or cooled to be sold as food * * * and any room used for any process incidental thereto.

(352.03) (10) (g) Custard ice cream, *frozen custard* (New York ice cream) is a frozen product made from cream, or milk and cream, sugar, eggs or egg powder or egg yolk; and may contain added milk solids, added milk fat, a natural flavoring, edible gelatin or harmless gum, harmless color, and shall contain not less than thirteen per cent of milk fat and five egg yolks or their equivalent in egg powder or egg yolk powder in each gallon, nor more than one-half of one per cent of said gelatin or gum, or a mixture of said gelatin or gum. The volume of custard ice cream (New York ice cream) after being melted shall be not less than one-half the volume of the custard ice cream (New York ice cream).

SECTION 2. A new section is added to the statutes and two new subsections are added to section 352.03 of the statutes to read: 98.40 (1) On and after July 1, 1933, no person, firm or corporation shall engage in the business of manufacturing ice cream, sherbet, ices or other similar frozen foods consisting of mixtures of milk, cream, sugar, water, color and flavor, frozen to a semi-solid or solid consistency or fruit juices, sweetened or unsweetened, flavored or unflavored, or colored or uncolored, and frozen to a semi-solid or solid consistency or mixtures including milk, skimmed milk, cream or derivatives thereof sweetened, fla-

vored, colored and frozen to a semi-solid or solid consistency without having obtained a license from the department of agriculture and markets as hereinafter provided.

(2) Application for license shall be made in such form as the commissioners of agriculture and markets may determine. Blank applications therefor shall be furnished by the department and the license issued shall apply to a specified location. The application shall describe the construction and condition of the equipment, machinery to be used, and the building, rooms or apartments in which it is desired to engage in the manufacturing, storing or packing of ice cream. Such license shall be granted when upon inspection the buildings, rooms or apartments are found to be of suitable construction and properly equipped for the manufacture of ice cream, sherbet, ices or other similar frozen food products. The business of preparing food products in such licensed plant shall be conducted in compliance with reasonable rules and regulations prescribed by the department of agriculture and markets pertaining to the proper handling, storing and freezing of the aforesaid food products and shall at all times be kept clean and sanitary. Each application shall be accompanied by a fee of five dollars payable to the department of agriculture and markets and no license shall be issued until such fee is paid. In case a license is refused the fee accompanying the application shall be returned by the commissioners of the department to the applicant with notification of refusal.

(3) (a) Licenses to engage in the manufacture of ice cream, sherbet, ices or other similar frozen food products shall expire on July first next following the date of issue and may be renewed upon application of the licensee and payment of a three dollars renewal fee.

(b) Licenses issued under the provisions of this section shall be deemed to be void and shall be surrendered to the department of agriculture and markets when the person, firm or corporation to whom it was granted discontinues the use of the building, room or apartment wherein the aforesaid frozen food products are manufactured or where another person, firm or corporation becomes owner, manager or operator of such establishment.

(4) (a) If in the opinion of the commissioners of agriculture and markets it is or becomes necessary to have some action taken or alterations, additions or changes are required in or upon premises for which a license has been granted or some change

is necessary in the operation of the premises for which application for a license has been filed in order to conform to the provisions of this section or any duly promulgated rule or regulation issued thereunder, written notice shall be served either personally or by registered mail upon the licensee or his agent requiring such action to be taken or such alterations, changes or additions to be made within thirty days provided, however, that if the required changes, alterations or additions cannot be made with reasonable diligence within thirty days the commissioners of agriculture and markets shall extend it to a reasonable time necessary for making such changes, alterations or additions if due diligence is used but in no case shall such extension of time exceed ninety days from receipt of notice thereof.

(b) It shall be the duty of every occupant whether owner or lessee of any premises licensed under the provisions of this section to make or cause to be made all changes, additions or alterations necessary to place the premises in compliance with the provisions of this section.

(5) (a) The commissioners of agriculture and markets are authorized after reasonable notice to revoke any license if the licensee shall fail to comply with any of the provisions of this section or with any rule or regulation promulgated and issued thereunder.

(b) A license which has been revoked shall be restored to full force and effect when the licensee fully complies with the provisions of this section and all rules and regulations prescribed thereunder. Any person licensed under the provisions of this section whose license shall have been refused or revoked being dissatisfied with such order of the commissioners of agriculture and markets may commence an action in the circuit court for Dane county against the commissioners of agriculture and markets to vacate and set aside such order on the ground that it is unlawful or unreasonable. The complaint shall be served with the summons. The answer or demurrer shall be served within twenty days after the service of the complaint. All such actions shall have precedence over any civil cause of a different nature and the court shall always be deemed opened for the trial thereof, and the same shall be tried and determined as other civil actions. No injunction shall issue suspending or staying any order of the commissioners of agriculture and markets, except upon application

to the court or the presiding judge thereof, notice to the commissioners of agriculture and markets and a hearing.

(c) All license fees collected shall be paid into the state treasury within ten days after the date of receipt thereof and shall be made available to defer the expense of enforcing the provisions of this section.

(6) No person, firm, or corporation shall manufacture, sell or solicit or accept orders for, ship, consign, offer or expose for sale, or have in possession with intent to sell for use or consumption in this state any article, product or compound made wholly or partly out of milk, cream, sugar, flavoring, with or without coloring or eggs, which shall be in imitation of ice cream, sherbet or ices as defined by section 352.03 of the statutes. Nothing in this section shall be construed as prohibiting the manufacture and sale of any frozen mixture or compound that is free from coloring, flavoring or sweetening which coloring, flavoring or sweetening would cause it to be in imitation of any of the varieties of ice cream, sherbets or ices defined and standardized in section 352.03 of the statutes.

(7) Any person who shall violate any of the provisions of this section or any of the rules or regulations adopted thereunder shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars or by imprisonment in the county jail for a period of not to exceed thirty days or by both such fine and imprisonment.

(352.03) (10a) Sherbet, milk sherbet, ice milk, is a frozen product made from milk, water and sugar with or without fruit juice, true fruit flavoring and harmless coloring, with or without edible gelatine or harmless vegetable gum and shall contain not more than two and one-half per cent by weight of milk fat nor more than five per cent by weight of milk solids and shall contain not less than thirty-five one-hundredths of one per cent of citric acid or tartaric acid or mixtures of said acids and shall contain not less than thirty-five one-hundredths of one per cent of acidity. Citric acid, tartaric acid, lactic acid or mixtures of said acids may be used.

(10b) Milk sherbet is a frozen product made from whole milk or its constituent parts, water, with or without fruit juice, true fruit flavoring and harmless coloring, with or without edible gelatine or harmless vegetable gum and starches, eggs, sugar or honey or both, and shall contain not more than three and one-half per

cent butter fat and not more than ten per cent by weight of milk solids, and must contain not less than thirty-five one-hundredths of one per cent of citric or tartaric acid or mixtures of said acids. Citric acid, tartaric acid, lactic acid, or mixtures of said acids may be used. All containers, packages, or wrappers used in connection with the sale of milk sherbet shall bear the words "Milk Sherbet", also the words "Maximum Butter Fat $3\frac{1}{2}$ per cent", clearly and distinctly on each package, receptacle or container in which the article is offered for sale, sold or stored.

(10c) Ice, fruit ice, water ice is a frozen product made from fruit juice or juices, water and sugar, with or without natural fruit flavoring and may contain added harmless color, edible gelatine or harmless vegetable gum, citric acid, tartaric acid, lactic acid or mixtures of the same and shall conform in names to the fruit juice or juices or the natural flavoring used.

SECTION 3. This act shall take effect July 1, 1933.

Approved July 25, 1933.

No. 803, A.]

[Published July 28, 1933.]

CHAPTER 465.

AN ACT to amend sections 4, 5 and 6 of chapter 335, laws of 1907, and to create section 6a of said chapter, authorizing the Wisconsin Valley Improvement company to issue bonds for certain purposes.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. Sections 4, 5 and 6 of chapter 335, laws of 1907 (as amended by chapter 514, laws of 1915) are amended to read: (Chapter 514, laws of 1915) Section 4. In case said Wisconsin Valley Improvement company shall improve any navigable tributary of the Wisconsin river not herein excepted or shall acquire the improvements or the control of the improvements of any river improvement company already operating on any such stream and shall so keep in repair and operate the works as to render the driving of logs and other floatables to the mouth of such tributary reasonably practicable and certain, it may charge and collect reasonable and uniform tolls upon all such logs, timber and other floatables driven or floated on said stream, and shall have all of the rights and remedies granted to river improvement companies by section 1777 of the Wisconsin statutes, and all amendments