

## CHAPTER 191

## CREAMERY AND CHEESE FACTORIES

S. F. 632

AN ACT to amend House File 356 relating to payment of license fees for creamery and cheese factories.

*Be It Enacted by the General Assembly of the State of Iowa:*

- 1 SECTION 1. House File 356, Acts of the 61st General Assembly, is  
 2 hereby amended by adding the following subsections to section eight  
 3 (8) thereof:  
 4 "4. By striking from subsection one (1) of such section the words  
 5 "three dollars" and inserting in lieu thereof the words "five (5) dol-  
 6 lars".  
 7 "5. By striking from subsection four (4) of such section the words  
 8 "three dollars" and inserting in lieu thereof the words "five (5) dol-  
 9 lars"."

Approved June 30, 1965.

## CHAPTER 192

## MARKETING DAIRY PRODUCTS

H. F. 230

AN ACT relating to the marketing of dairy products.

*Be It Enacted by the General Assembly of the State of Iowa:*

- 1 SECTION 1. For the purpose of this Act:  
 2 1. "Dairy product" means milk, skim milk, cream, sour cream, ice  
 3 cream, ice cream mix, ice milk except that sold in semifrozen form,  
 4 ice milk mix, cottage cheese, frozen desserts, reconstituted milk, mini-  
 5 mal milk fat products, and any additive variant of any dairy product.  
 6 2. "Department" means state department of agriculture.  
 7 3. "Secretary" means the secretary of agriculture of the state of  
 8 Iowa.  
 9 4. "Person" means any individual, corporation, co-operative, associ-  
 10 ation, partnership, or other business unit.  
 11 5. "Processor" means any person engaged in the business of manu-  
 12 facturing, processing, or packaging dairy products.  
 13 "Distributor" means any person engaged in the business of selling  
 14 any dairy product at wholesale and any person engaged in the business  
 15 of selling any dairy product at retail on home delivery routes.  
 16 7. "Retailer" means any person within this state engaged in the  
 17 business of operating any retail establishment or institution, including  
 18 but not limited to hotels, restaurants, grocery stores, drug stores, and  
 19 automatic vending machines where dairy products are consumed or  
 20 sold to customers. This subsection shall not apply to schools, churches  
 21 or other charitable institutions not operated for profit.  
 22 8. "Broker" means any person engaged in negotiating sales or pur-

23 chases of selected dairy products for or on behalf of a processor, dis-  
24 tributor, or retailer.

25 9. "Sale" or "sell" means and includes any commercial transfer for  
26 consideration, exchange, barter, gift, or offer for sale and distribution  
27 in any manner or by any means.

28 10. Any subsidiary or affiliate corporation, co-operative, officer, di-  
29 rector, or partner of a corporation, co-operative, or partnership which  
30 is a processor or distributor of dairy products is deemed to be a proces-  
31 sor or distributor of dairy products.

1 SEC. 2. The secretary of agriculture is hereby entrusted with the  
2 administration and enforcement of this Act. There is hereby created  
3 in the department of agriculture a division to be known as the "Divi-  
4 sion of Dairy Trade Practices". The head of the division shall be the  
5 "Chief of the Division of Dairy Trade Practices". All powers of the  
6 secretary under this Act may be exercised by and through the chief of  
7 the division of dairy trade practices. The secretary shall employ such  
8 professional and other personnel as, in his judgment, shall be neces-  
9 sary to the proper performance of his duties hereunder.

1 SEC. 3. It shall be unlawful for any person engaged in business  
2 within the state of Iowa, either directly or indirectly, to discriminate  
3 in price between different purchasers of dairy products of like grade  
4 and quality where the effect of such discrimination may be substan-  
5 tially to lessen competition or tend to create a monopoly\*, or to injure,  
6 destroy, or prevent competition with any person who either grants or  
7 knowingly receives the benefit of such discrimination or with custom-  
8 ers of either the grantor or receiver. Nothing herein shall prevent:

9 1. Differentials which make only due allowance for differences in  
10 the cost of manufacture, sale, or delivery resulting from the differing  
11 methods or quantities in which dairy products are sold or delivered to  
12 purchasers or differentials otherwise permitted in this Act.

13 2. Persons engaged in selling dairy products from selecting their  
14 own customers in bona fide transactions are not in restraint of trade.

15 3. Price changes from time to time in response to changing condi-  
16 tions affecting the market for or the marketability of dairy products  
17 such as, but not limited to, actual or imminent deterioration of perish-  
18 able goods, obsolescence of seasonal goods, distress sales under court  
19 process, or sales in good faith in discontinuance of business in dairy  
20 products.

21 4. Price differentials made in good faith to meet an equally low price  
22 of a competitor, whether the price of the competitor is in compliance  
23 with or in violation of this Act.

1 SEC. 4. It shall be unlawful for any person to discriminate in price  
2 by selling or offering to sell any dairy product to any purchaser in the  
3 state of Iowa at prices lower than those exacted by such persons else-  
4 where in the state for the purpose or with the effect of injuring com-  
5 petition or tending to create a monopoly\*; provided however, that  
6 nothing herein contained shall prevent price differentials which make  
7 only due allowance for differences in the cost of sale or transportation  
8 resulting from differing methods or quantities in which such dairy  
9 products are sold or transported to such purchasers; and provided

\*Accorded to enrolled Act.

10 further, that nothing herein contained shall prevent sales made in good  
11 faith to meet an equally low price of a competitor, whether the price of  
12 the competitor is in compliance with or in violation of this Act.

1 SEC. 5. It shall be unlawful for any processor, distributor, or re-  
2 tailer to engage in the following practice:

3 1. To enter into any agreement or contract with any other person  
4 for the establishment or maintenance of minimum prices of dairy  
5 products in restraint of trade and for the purpose of eliminating free  
6 and open competition in the sale of dairy products.

1 SEC. 6. No processor or distributor shall give or extend discounts  
2 or rebates, directly or indirectly, to retailers or other processors or  
3 distributors on dairy products or give or extend to such purchasers  
4 any services connected with the delivery, handling, or stocking of such  
5 products except as provided in this Act. A processor or distributor  
6 may provide services to a particular processor, distributor, or retailer  
7 or may sell dairy products at a price necessary to meet a bona fide offer  
8 by a competitor. The service or discount shall not be given until the  
9 processor or distributor first files with the department a written record  
10 of the date and terms of the competitive offer, the name of the proces-  
11 sor, distributor, or retailer to whom the offer was made, and the name  
12 of the competitor who made the offer. Any such record filed with the  
13 department shall be used only for determining or verifying proof of  
14 violations of this Act.

1 SEC. 7. Price list to be filed. All distributors offering dairy prod-  
2 ucts for sale within the state shall file with the department on a form  
3 provided by said department a complete price list showing the invoice  
4 price of such distributor of all items of dairy products sold or offered  
5 for sale by them. Distributors who offer dairy products for sale both  
6 at their respective places of business and deliver to retailer or retail  
7 outlets, shall include on such price lists filed with the department the  
8 different prices established for dairy products offered for sale at their  
9 respective places of business and for dairy products delivered to the  
10 retailer or retail outlet. Distributors who offer dairy products for sale  
11 to consumers on home delivery routes shall include on such price lists  
12 filed with the department, the different prices established for dairy  
13 products offered for sale to such consumers. Within thirty (30) days  
14 after the effective date of this Act, every distributor shall file with the  
15 department its initial price schedules and schedules of discounts and  
16 rebates and thereafter, every distributor shall charge its prices in  
17 accordance with its schedule on file with the department until such  
18 price schedule is changed as hereinafter provided. Before any dis-  
19 tributor may make any change in its price schedule and prices charged,  
20 it shall give notice by certified mail to the department setting forth its  
21 new schedule of prices or new schedule of discounts and rebates prior  
22 to the effective date of any change in such schedule on file with the  
23 department (except that where prices are changed in good faith to  
24 meet an equally low price of a competitor, notice to the department of  
25 the new schedule of prices shall be given within two (2) business days  
26 after such change). The initial filing of schedules or any new sched-  
27 ules shall be filed with the department either in person or by certified  
28 mail. Price lists filed with the department shall be used only for deter-

29 mining and proving violations of this Act. Failure or refusal to file  
30 current price lists with the department shall be a violation of this Act.

1 SEC. 8. No processor or distributor shall furnish, give, lend, sell,  
2 or rent any advertising signs of a permanent nature except signs ad-  
3 vertising the processor's or distributor's own products. Not more than  
4 one-third ( $\frac{1}{3}$ ) of the space or cost of advertising signs permitted  
5 under this section may be used to identify the retailer.

1 SEC. 9. No processor or distributor shall make payments of money,  
2 credit, gifts, or loans to retailers as rental for the storage or display  
3 of dairy products on the premises where offered for sale by the retailer.

1 SEC. 10. No processor or distributor shall make or underwrite  
2 loans to a retailer or become bound in any manner for the financial  
3 obligation of any retailer except that a processor or distributor may  
4 lend money to a retailer for the purchase of equipment for the storage,  
5 transportation, and display of dairy products. Such loans may be made  
6 to the retailer provided the loan is for not more than ninety (90) per-  
7 cent of the purchase price with at least six (6) percent annual interest  
8 on the principal amount and on the unconditional written promise of  
9 the retailer that the loan shall be paid within a period not to exceed  
10 thirty-six (36) months.

1 SEC. 11. No processor or distributor shall furnish, sell, give, lend,  
2 or rent any equipment to a retailer except:

3 1. Processors and distributors, under a bill of sale or conditional  
4 sales contract describing the property sold and specifying the price  
5 and terms of sale, may sell equipment for the storage, transportation,  
6 and display of dairy products to the retailer. The selling price of such  
7 equipment shall be not less than the cost to the wholesaler less ten  
8 (10) percent per year depreciation plus transportation and installation  
9 costs plus at least six (6) percent, but in no event shall the price be less  
10 than ten (10) dollars per unit. If the processor or distributor makes  
11 the sale under a security agreement or conditional sales contract, the  
12 terms of sale shall be no more favorable to the retailer than those pro-  
13 vided in section eleven (11) of this Act.

14 2. Processors and distributors may provide without restriction coin-  
15 vending machines from which the product vended is intended by such  
16 processor or distributor to be consumed on the premises.

17 3. Processors and distributors may furnish equipment for the stor-  
18 age, transportation, or display of dairy products for one period of not  
19 longer than ten (10) consecutive days a year to any one retailer for  
20 use at a fair, exhibition, exposition, or other promotional event for  
21 agricultural, industrial, charitable, educational, religious, or recrea-  
22 tional purposes.

1 SEC. 12. No processor or distributor shall maintain or make re-  
2 pairs of any equipment owned by a retailer except equipment used  
3 exclusively for dairy products. On such maintenance or repairs, the  
4 processor or distributor shall make charges for the service and parts  
5 at the same prices as are charged by third persons rendering such  
6 service in the community where the retailer is located. In no event

7 shall the charges be less than the cost to the processor or distributor  
8 plus a reasonable margin of profit.

1 SEC. 13. No processor or distributor shall give, offer to give, fur-  
2 nish, finance, or otherwise make available any free goods to any person,  
3 directly or indirectly, in connection with the sale of dairy products or  
4 to any other person doing business with such person, or give, offer to  
5 give, furnish, finance, or otherwise make available any payments, gifts,  
6 or grants of anything of value to any retailer. Nothing in this section  
7 shall prevent transactions with retailers of any of the following:

8 1. The furnishing of point of sale advertising material made of  
9 paper, cardboard, or other material not of a permanent nature for the  
10 use in the promotion of the products of such processor or distributor  
11 which remain inside retailer locations.

12 2. The furnishing of hostesses or demonstrators at any retailer's  
13 location to promote the products of the processor or distributor.

14 3. The advertising by a processor or distributor of products through  
15 any advertising media the processor or distributor selects which does  
16 not involve allowances, payments, or the furnishing of other property  
17 to persons purchasing such products in a manner prohibited by this  
18 section.

19 4. Advertising allowances which do no more than reimburse a re-  
20 tailer for costs in advertising dairy products of the processor or dis-  
21 tributor.

1 SEC. 14. No processor or distributor shall be prohibited from oper-  
2 ating a retail outlet for retail sales or prohibited from using in the  
3 retail outlet any equipment or advertising or miscellaneous matter  
4 owned by the processor or distributor provided the retail outlet is  
5 under direct control and management of the processor or distributor.

1 SEC. 15. No processor or distributor shall be prohibited from giv-  
2 ing away dairy products to be consumed on the sale premises.

1 SEC. 16. It shall be unlawful for any retailer to receive, directly or  
2 indirectly, from or through a processor, distributor, or broker, any  
3 discount, rebate, allowance, service, price discrimination, advertising  
4 material, loan, equipment, payment, or any other thing of value all as  
5 prohibited by this Act.

1 SEC. 17. It shall be unlawful for a broker or any officer or agent  
2 of any brokerage firm to participate, directly or indirectly, in any  
3 practice prohibited by this Act. It shall be unlawful for any processor,  
4 distributor, or retailer to engage or offer to engage, directly or indi-  
5 rectly, through a broker in any practice prohibited by this Act.

1 SEC. 18. Any person claiming to be injured by another person  
2 through the violation of any of the provisions of this Act may file in  
3 writing a statement of such violation with the department. Upon  
4 receipt of the written statement, the department shall immediately  
5 cause an investigation to be made of the alleged violation. Whenever  
6 it shall appear that any person is violating or threatening to violate  
7 any of the provisions of this Act or the regulations or orders of the  
8 secretary, then the department may call upon the county attorney of

9 any county in which such violation occurred to bring suit against such  
10 person in the district court to restrain such person from continuing or  
11 from carrying out the acts or practices alleged. In such suit he may  
12 obtain such injunction prohibitory and mandatory including tempo-  
13 rary restraining orders and temporary injunctions as the facts may  
14 warrant without being required to prove that an adequate remedy at  
15 law does not exist and without being required to give bond.

1 SEC. 19. Whenever the department has reason to believe that any  
2 distributor or retailer or processor may be in possession of information  
3 relevant to an investigation by it of suspected violations of the provi-  
4 sions of this Act, the secretary may require such person to file with  
5 him in such form as he may prescribe special reports or answers in  
6 writing to specific questions furnishing such information. Such re-  
7 ports and answers shall be made under oath or otherwise as the sec-  
8 retary may prescribe and shall be filed with him within such reasonable  
9 period as he may prescribe. Any person who fails without lawful cause  
10 to file such reports or answers in writing within the period prescribed  
11 or shall wilfully make or cause to be made any false statement in any  
12 such report or answer in writing shall be guilty of a misdemeanor and  
13 upon conviction thereof fined not less than five hundred (500) dollars  
14 nor more than one thousand (1,000) dollars.

1 SEC. 20. Whenever the secretary has reason to believe that any  
2 person has violated any of the provisions of this Act or any rules or  
3 regulations adopted thereunder, he may enter an order requiring such  
4 person to appear before him and show cause why an order should not  
5 be entered requiring such person to cease and desist from the viola-  
6 tions charged. Such order shall set forth the alleged violations, fix the  
7 time and place of the hearing, and provide for notice thereof which  
8 shall be given not less than twenty (20) days before the date of such  
9 hearing. After hearing by the secretary, or if the person charged with  
10 such violation fails to appear at the time of said hearing, if he finds  
11 such person to be in violation he shall enter an order requiring such  
12 person to cease and desist from the specific acts, practices, or omissions  
13 so found to be in violation and from related acts, practices or omis-  
14 sions. Any such order shall become final upon the expiration of thirty  
15 (30) days after its entry if no appeal is taken therefrom.

16 Any person aggrieved by any order entered by the secretary or other  
17 action of the secretary may take an appeal therefrom to the district  
18 court as provided elsewhere herein for license denial, suspension or  
19 revocation.

20 Any person violating any order of the secretary under the first para-  
21 graph of this section after the same has become final or on the termi-  
22 nation of any review proceedings shall be subject to a civil penalty to  
23 be levied by the district court in a proceeding instituted for that pur-  
24 pose in an amount of not less than five hundred (500) dollars and not  
25 more than ten thousand (10,000) dollars provided that in the case of  
26 continuing violations the minimum amount of such penalty shall be  
27 either five hundred (500) dollars or twenty-five (25) dollars for each  
28 day of violation, whichever is the larger.

1 SEC. 21. The department is authorized and empowered to admin-  
2 ister oaths and to issue subpoenas for persons and pertinent operating

3 records in making investigations provided in section nineteen (19) of  
4 this Act. If a person fails or refuses to obey a subpoena issued under  
5 this Act, the department may apply to the district court to issue an  
6 order requiring the person to appear before the department to produce  
7 evidence or to give testimony concerning the matter under investiga-  
8 tion. The application for the order shall be filed with the district court  
9 within the county in which the investigation is conducted or in which  
10 the person guilty of failure or refusal to obey is found or resides or  
11 transacts business or has his principal place of business. Any person  
12 wilfully failing to obey an order of the court is guilty of contempt of  
13 court and shall be proceeded against as provided by law.

1     SEC. 22. Any person who is injured in business or property by  
2 reason of another person's violation of any provisions of this Act may  
3 intervene in the suit for injunction instituted against the other person.  
4 The injured party may bring a separate action and recover three (3)  
5 times the actual damages sustained as a result of the violation together  
6 with the costs of the suit or may sue to enjoin the violation of any  
7 provision of this Act.

1     SEC. 23. Whenever the department has reason to believe that any  
2 processor or distributor required to obtain a license under section one  
3 hundred ninety-two point one (192.1) of the Code has wilfully vio-  
4 lated any cease and desist order issued under the provisions of this Act  
5 after the same has become final and continued in such violation after  
6 the expiration of a ten-day notice from the department of intention to  
7 commence proceedings for the denial, suspension or revocation of such  
8 license, and it appears to the department that a proceeding should be  
9 had to determine whether his license should be denied, suspended, or  
10 revoked, the department shall serve notice on such person in writing  
11 by certified mail of the charges and grounds upon which a license is  
12 sought to be denied, suspended, or revoked. The notice shall include  
13 the time and place, not less than ten (10) days after the mailing of the  
14 notice, at which a hearing shall be held to determine whether to deny,  
15 suspend, or revoke the license.

1     SEC. 24. Any person whose license is sought to be denied, sus-  
2 pended, or revoked shall have full rights to counsel and to produce  
3 witnesses in his behalf at the hearing. After full investigation and  
4 hearing, the department may deny, suspend, or revoke the license of  
5 any person who is found to have wilfully violated any provision of this  
6 Act. When the department finds that a violation warrants the sus-  
7 pension of the license, no license shall be suspended for a period to  
8 exceed thirty (30) days upon proof of a first violation or for a period  
9 to exceed six (6) months upon proof of a second violation. Upon proof  
10 of a third and subsequent violations, the license shall be suspended for  
11 a period of one (1) year where the department finds that such viola-  
12 tion warrants a suspension.

1     SEC. 25. The department shall by certified mail or by personal  
2 service notify the person whose license has been denied, suspended, or  
3 revoked setting forth the reasons for the decision. The denial, sus-  
4 pension, or revocation shall become effective thirty (30) days after the  
5 mailing or service of the notification unless the person whose license

6 has been denied, suspended, or revoked files within the thirty-day  
7 period a notice of appeal in the district court and serves a copy of the  
8 notice of appeal upon the department. Thereupon, the department  
9 shall within thirty (30) days certify and file with the court a copy of  
10 the record and decision including the transcript of the hearings upon  
11 which the decision was based.

1 SEC. 26. The trial before the court shall be an equity action and  
2 legal evidence pertaining to the issue of whether the license shall be  
3 denied, suspended, or revoked may be submitted including new or addi-  
4 tional evidence not submitted to the department. The court shall have  
5 the power to affirm, modify, or reverse the decision of the department  
6 but in no instance shall the court suspend a license for a period ex-  
7 ceeding the suspensions provided in section twenty-five (25) of this  
8 Act. The clerk of court upon entry of judgment of suspension, denial,  
9 or revocation shall immediately forward to the department a certified  
10 copy thereof. Pending final decision of the appeal the status quo of  
11 the license shall be preserved.

1 SEC. 27. Any action arising under this Act, whether in law or  
2 equity, shall be commenced within two (2) years after the right of  
3 action first accrues or is forever barred.

1 SEC. 28. The department is authorized and directed to promulgate  
2 rules and regulations to carry out the purposes of this Act.

1 SEC. 29. Storage cabinets prohibited under section twelve (12) of  
2 this Act supplied by processors and distributors to retailers prior to  
3 the effective date of this Act shall be removed from the retailer's  
4 premises or sold as provided in this Act prior to June 30, 1966.

1 SEC. 30. For the purpose of administering and enforcing the pro-  
2 visions of this Act, each processor shall pay to the secretary permit  
3 fees in an amount, as from time to time set by the secretary, not to  
4 exceed five (5) mills per hundredweight on milk processed into dairy  
5 products as defined in section one (1) of this Act, and sold within the  
6 state of Iowa, except ice cream and its additive variants and non-milk  
7 fat imitations which amount shall not be in excess of three (3) mills  
8 per gallon thereof. Products upon which fees have been paid shall be  
9 exempt from further fees in successive transactions. The fees for each  
10 month thus computed shall be paid by the dealer to the secretary on or  
11 before the twenty-fifth (25th) day of the following month.

Approved June 30, 1965.