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Overview

This is the 2017 omnibus agriculture policy bill. This bill contains many recommendations from the Minnesota Department of Agriculture (MDA). The bill also incorporates provisions similar to or the same as those in H.F.s 673, 686, 761, 1006, 1047, 1221, and 1511.

Section

Article 1: Agricultural Policy

Overview

This article contains various agriculture policy provisions. Topics include advisory inspections, experimental and genetically engineered pesticides, nursery stock, seed potatoes, commercial feed, food handlers, various councils and boards, Rural Finance Authority (RFA) loan eligibility, the Agricultural Utilization Research Institute (AURI), and Farmer-Lender Mediation.

- 1 **Advisory inspections.** Provides that the law requiring agencies to conduct requested advisory inspections would now apply to dairy or food inspections performed by MDA.
- 2 **Experimental use permit.** Defines the term for purposes of MDA's pesticide regulatory duties, including the registration-exemptions and application requirements provided in subsequent sections.

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- 3 **Experimental use pesticide product.** Defines the term for purposes of MDA's pesticide regulatory duties, including the registration-exemptions and application requirements provided in subsequent sections.
- 4 **Requirement.** Exempts from the pesticide registration requirement a substance or mixture of substances tested only to determine efficacy, toxicity, or other properties and not requiring an experimental use permit from the federal government.
- 5 **Requirement.** Exempts from the experimental-use pesticide registration requirement a substance or mixture of substances tested only to determine efficacy, toxicity, or other properties and not requiring an experimental use permit from the federal government.
- 6 **Application.** Modifies the information a person must submit to MDA when registering an experimental use pesticide product.
- 7 **Structural pest control applicators.** Requires a structural pest control applicator to post notice in a conspicuous place inside a rented apartment where the applicator has applied pesticide. The notice must include a list of the post-application precautions contained on the pesticide product label, along with any other information MDA requires.
- 8 **Expiration.** Retroactively extends the Minnesota Agricultural Fertilizer Research and Education Council to June 30, 2020.
- 9 **Expiration.** Retroactively extends the Minnesota Agricultural Fertilizer Research and Education Program to June 30, 2020.
- 10 **Occasional sales.** Exempts municipalities from the requirement to obtain a nursery stock certificate when the municipality sells certain nursery stock for specific purposes.
- 11 **Nursery stock grower certificate.** Allows nursery stock growers to electronically submit an application to renew their nursery stock grower certificate, and prohibits a late penalty if the application is submitted electronically by December 31.
- 12 **Nursery stock dealer certificate.** Similar to the prior section, this section allows nursery stock dealers to electronically submit an application to renew their nursery stock dealer certificate, and prohibits a late penalty if the application is submitted electronically by December 31.
- 13 **Inspected.** Modifies the definition of "inspected" for potatoes to provide that when seed potatoes are produced in a laboratory, inspected means examining the laboratory's records.
- 14 **Certified.** Modifies the definition of "certified" for potatoes to provide that when seed potatoes are produced in a laboratory, certified means that the laboratory facilities, procedures, and protocols have been examined and the seed potatoes are inspected after harvest, removal or release from the laboratory and duly certified.
- 15 **Certificates of inspection.** Authorizes MDA to issue inspection certificates for seed potatoes produced in a laboratory only after the laboratory's records are inspected.
- 16 **Applications for inspections; withdrawals.** Modifies current potato law to authorize MDA to regulate seed potatoes grown in laboratories.
- 17 **Commissioner's duties.** Technical.

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18 **Commercial feed.** Modifies the definition of “commercial feed” for regulatory purposes. Modifies the exemption for certain whole and unmixed seeds and other specified commodities by providing that the seeds must be identified in United States grain standards and the seeds and other specified commodities are not labeled as feed or for use as feed.

19 **Manufacture.** Modifies the definition of “manufacture” (commercial feed) to include packaging or labeling feed for distribution.

20 **Commissioner.** Defines commissioner (of agriculture) to include the commissioner’s agent, rather than the commissioner’s designated representative.

21 **Requirement.** Requires every commercial feed guarantor to obtain a commercial feed license if the grantor’s name will appear on the product label.

22 **Application; fee; term.** Modifies procedures for obtaining and renewing a commercial feed license.

23 **Labeling.** Requires commercial feed labels to include a quantity statement.

24 **Certificate application.** Technical change to conform with the Repealer section in this article, which would eliminate all other subdivisions in this section.

25 **Prohibited acts.** Prohibits failing to register a small package of commercial feed with MDA and eliminates a prohibition against failing to obtain a small package listing (see the following section).

26 **Amount of fee.** Requires a person to register, not provide a listing of, pet food and specialty pet food sold only in packages of ten pounds or less. Lifts the inspection fee exemption for commercial feed for which an inspection fee was already paid by a previous distributor. Modifies the fee exemption for customer formula feed. Modifies the fee exemption for distribution to feed purchasers located outside of Minnesota and provides that no fee need be paid on a first distribution to a qualified buyer who, with MDA’s approval, is responsible for paying the inspection fee. Provides that certain licensees who distribute feed ingredients outside of the state are not required to pay the tonnage fee if the licensee submits a \$100 nonrefundable application fee and complies with MDA’s recordkeeping requirements.

27 **Containers of ten pounds or less.** Modifies requirements for distributors of pet food and specialty pet food to reflect that product sold in packages of ten pounds or less must be registered with MDA.

28 **Annual statement.** Modifies requirements for distributors of pet food and specialty pet food and establishes a specific deadline for tonnage reports submitted to MDA.

29 **Records.** Technical change.

30 **Notice; public comment.** Provides that MDA must adopt both official feed definitions and official feed terms as promulgated by the Association of American Feed Control Officials before any amendments adopted by the Association are automatically incorporated in Minnesota feed law.

31 **Authorization; limitation.** Authorizes MDA to designate agents to perform feed inspections on behalf of MDA.

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32 **Notification; promptness.** Technical changes.

33 **Receipt for samples.** Requires MDA or MDA's designated agent to issue a receipt describing any feed samples obtained during an inspection.

34 **Entry of premises.** Authorizes MDA or MDA's agent to copy a person's feed distribution records.

35 **Manufacturer's report of investigation.** Technical change.

36 **Detained commercial feeds.** Technical changes.

37 **Application for license.** Reduces the amount of information that wholesale producer dealer license applicants must submit to MDA.

38 **Regularly engaged.** Defines this term for purposes a food handler license exemption in current law for charitable/religious/educational and certain other organizations not regularly engaged in the food business (see Minn. Stat. § 28A.15, subd. 2).

39 **Direct sales to consumers.** Authorizes food-handler-license-exempt cottage food sellers to donate food for an educational, charitable, or religious fundraiser.

40 **Expiration.** Extends the Food Safety and Defense Task Force by ten years, to June 30, 2027.

41 **Animals.** Authorizes MDA to regulate those who slaughter, process, or label domesticated animals of any size for use as human food.

42 **Facility design; development and operation.** Modifies the Dairy Research, Teaching, and Consumer Education Authority. The Authority would no longer be required to acquire a facility for dairy research, teaching, and consumer education. The list of facility features would change from mandatory to permissive when a feature is not practical.

43 **Expiration.** Extends the Dairy Research, Teaching, and Consumer Education Authority's expiration date by three years, to August 1, 2020. The Authority would not expire if it identifies a facility site by that date.

44 **Eligibility for restructured loan.** Increases the net worth limit for applicants to RFA's Restructure II Loan Program to \$1,700,000.

45 **Eligibility for beginning farmer loans.** Increases the net worth limit for applicants to RFA's Beginning Farmer Loan Program to \$800,000.

46 **Total net worth limit.** Increases the net worth limit for applicants to RFA's Agricultural Improvement Loan Program to \$800,000.

47 **Loan participation.** Increases the net worth limit for applicants to RFA's Livestock Expansion Loan Program to \$1,700,000.

48 **Low or moderate net worth.** Increases the net worth limit for applicants to RFA's Aggie Bond Loan Program to \$800,000.

49 **Board of directors.** Modifies AURI's board by adding two at-large members.

50 **Duties.** Eliminates AURI's duty to provide research grants to public and private educational institutions and other organizations undertaking certain basic and applied research.

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51 **Staff.** Requires the AURI board to hire only the executive director; currently the board must hire all AURI staff.

52 **Bylaws.** Eliminates a requirement that AURI publish its bylaws and bylaw amendments in the State Register. Instead, AURI would publish this information on the institute's website.

53 **Meetings.** Authorizes the AURI board to conduct meetings by telephone or other electronic means, subject to certain conditions that apply to other state boards and commissions.

54 **Conflict of interest.** Removes language prohibiting an AURI board member or staff person from participating in a decision in which the board member or staff person has a direct or indirect financial interest. Instead, the board member or staff person would not be allowed to advocate for it.

55 **Funds.** Eliminates a requirement that AURI place any revenue received from nonstate sources in a depository of the board's choosing. Increases the dollar amount for expenditures that require board approval from more than \$25,000 to more than \$50,000 and applies this same standard to revenues received. Provides that the full board no longer must approve these receipts and expenditures.

56 **Accounts; audits.** Lifts a requirement that AURI pay each year for an audit by the Legislative Auditor. Requires AURI to pay for an annual financial audit by an independent audit firm. Requires AURI to file the audit report with the Charities Division of the Office of the Attorney General; AURI currently must file the report with the Secretary of State.

57 **Bond disbursement.** Requires MDA to disburse grain buyer bond proceeds 200 days after MDA posts notice of a claim. Requires MDA to initiate bond payments for all eligible claims received.

58 **Bond disbursement.** Similar to the prior section, this section requires MDA to disburse public grain warehouse operator bond proceeds 200 days after MDA posts notice of a claim. Requires MDA to initiate bond payments for all eligible claims received.

59 **Rights after default; judicial enforcement; consignor or buyer of accounts; chattel paper, payment intangibles, or promissory notes.** Increases the threshold for Uniform Commercial Code foreclosures, repossession, and court judgments subject to the Farmer-Lender Mediation Act from at least \$5,000 to the new, higher amount set in another section below (i.e., \$15,000).

60 **Adjoining owners.** Modifies the Partition Fence law so that adjoining landowners would only be required to share equally in fence construction and maintenance costs if both of the adjoining lands are used to produce or maintain livestock, as defined, for agricultural or commercial purposes.

Effective date: Effective following final enactment and applicable only to partition fences constructed on or after that date.

61 **Requirement.** Increases the threshold for court judgments subject to the Farmer-Lender Mediation Act from at least \$5,000 to the new, higher amount set in another section below.

62 **Requirement.** Increases the threshold for contracts for deed subject to the Farmer-Lender Mediation Act from at least \$5,000 to the new, higher amount set in another section below.

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63 **Requirement.** Increases the threshold for foreclosures subject to the Farmer-Lender Mediation Act from at least \$5,000 to the new, higher amount set in another section below.

64 **Expiration.** Pushes the expiration date for the Farmer-Lender Mediation Act out by four years to June 30, 2022.

65 **Debts.** Exempts from Farmer-Lender Mediation Act requirements for two years any new debt issued by a creditor to a farmer as the result of a farmer-lender mediation. In other words, for the first two years a creditor would not be required to offer mediation to the farmer before foreclosing, cancelling, or collecting on this new debt.

66 **Minimum eligible debt amount.** Provides that a debt of less than \$15,000 is not subject to Farmer-Lender Mediation Act requirements. Requires MDA and University of Minnesota Extension (“Extension”) to notify the legislature every five years what the \$15,000 threshold would be if adjusted using a federal cost-of-production index.

67 **Mediation request.** Requires a farmer participating in mediation to authorize Extension to pull the farmer’s credit report. Requires the mediation request form completed by a farmer seeking mediation to notify the farmer that the farmer’s failure to list all significant unsecured creditors could result in a determination that the farmer is participating in mediation in bad faith. Under current law, mediation may terminate and the creditor may proceed to collect on the debt if a mediator finds that a farmer is participating in bad faith.

68 **Financial analyst and farm advocate.** Requires the financial analyst assigned to prepare a farmer for mediation to assure that all relevant financial information is prepared prior to the first mediation meeting with the creditor(s).

69 **Orientation session.** Requires the mediator to inform the farmer prior to the first mediation meeting that participating in good faith means addressing any inadequacies in the farmer’s records that were identified by the financial analyst.

70 **Mediation proceeding notice.** Requires Extension to send a mediation proceeding notice and claim form to any secured creditors that the farmer did not reveal but that were discovered by Extension by examining the farmer’s credit report.

71 **End of mediation.** Requires the mediation termination statement prepared by the mediator to include the date on which the mediation ended and to identify any new debt issued by a participating creditor to the farmer as a result of the mediation.

72 **Obligation of good faith.** Requires Extension to notify all parties, prior to the initial mediation meeting, of their obligation to participate in good faith and the consequences of failing to participate in good faith. Specifies that bad-faith participation includes a farmer’s failure to provide complete financial information no later than the initial mediation meeting with the creditor(s).

Increases to \$3,600 the amount that a creditor is required to release to the farmer each month for living expenses (net of any off-farm income). Under current law, a creditor is required to release—net of any off-farm income—the lesser of \$1,600 or 150% of the amount the farmer’s family would receive under the Minnesota Family Investment Program (MFIP). According to the Minnesota Department of Human Services, under MFIP a family of four is eligible to receive up to \$1,207/month in cash and food benefits. (See Minnesota

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Department of Human Services. October 1, 2016. *DHS Reissues “Work Will Always Pay...With MFIP”*. Bulletin 16-11-01.) For reference, \$1,207 x 150% = \$1,811.

73 **Study update required; nuisance liability temporarily modified.** Requires MDA to update a livestock industry study first mandated in 2015. Provides that until February 1, 2022, swine and cattle feedlots are shielded from certain nuisance lawsuits under the state’s “Right-to-Farm” law regardless of the feedlot’s size.

74 **Revisor’s instruction.** Technical; directs the Revisor of Statutes to make changes necessary to accommodate the new pesticide definitions proposed in this article.

75 **Repealer.** Repeals the following statutes:

- 18B.01, subd. 10a – definition of “genetic engineering” for purposes of pesticide law
- 18B.01, subd. 10b – definition of “genetically engineered pesticide” for purposes of pesticide law
- 18B.01, subd. 22a – definition of “release” for purposes of pesticide law
- 18B.285 – experimental genetically engineered pesticide product registration
- 25.371, various subds. – standards used by MDA when evaluating a request to issue a Good Manufacturing Practices certificate for commercial feed and feed ingredients. Because subd. 2 would not be repealed, MDA would retain the ability to issue these certificates and to charge a fee to cover the agency’s costs incurred.
- 41D.01, subd. 4 – expiration of the Minnesota Agriculture Education Leadership Council
- 583.22, subd. 7b – definition of “necessary living expenses” for purposes of the Farmer-Lender Mediation Act.

Article 2: Dairy Law Reorganization

Overview

This article recodifies in a new chapter 32D most of the dairy statutes that currently reside in Minnesota Statutes, chapter 32.

1 **Dairy products.** Updates a data-practices cross reference to reflect the recodification. The classification of dairy financial and production data collected by MDA would not change.

2 **Authority.** Technical; updates a cross-reference.

3 **Classification.** Technical; updates a cross-reference.

4 **Violations; prohibited acts.** Technical; updates a cross-reference.

5 **Definitions.** Defines several key terms, including “adulterated”, “dairy farm”, “dairy plant”, “dairy product”, “milk”, “Minnesota farmstead cheese”, “pasteurization”, and “recombinant bovine growth hormone”.

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6 **Inspection authority and duties.** Requires MDA to inspect all places where dairy products are made, stored, or served as food for purchase, and all places where hooved mammals are kept by persons engaged in milk sales. Authorizes MDA to require correction of any unsanitary conditions or practices. Authorizes MDA to suspend a person's permit or certification for refusal to allow MDA to inspect. Authorizes MDA to inspect milk and milk products and the corresponding premises. MDA must acquaint the milk processor or producer with the requirements for producing a Grade A or Manufacturing Grade milk supply and must perform a preliminary inspection to determine if a processor's farms and plants are in a state of compliance. Requires Grade A or Manufacturing Grade processors to provide a continuous field service to assist producers who sell their milk to the processor's plants. The person who performs this field service must obtain a permit from MDA. Prohibits local milk or dairy standards that are more stringent than the requirements established in this chapter or in rules adopted by MDA pursuant to this chapter. Requires MDA to adopt rules regarding the identity, production and processing standards for Grade A or Manufacturing Grade milk and dairy products. MDA must adopt the definitions, standards, and requirements in the national Grade A Pasteurized Milk Ordinance of the United States Department of Health and Human Services. Producers of non-Grade A milk would be subject to the standards in specific portions of the USDA-AMS Recommended Requirements for Milk for Manufacturing Purposes and its Production and Processing, except MDA would be required to develop standards by which a person could comply with these federal standards without violating their religious beliefs. Allows certified industry professionals to perform inspections to the extent allowed by federal law. Provides for the collection and deposit of all fees and penalties collected pursuant to this new chapter and appropriates the proceeds to MDA.

7 **Bulk milk hauler and sampler license.** Requires any person collecting milk from a dairy farm and transporting it by bulk pickup to a dairy plant to obtain a license from MDA. MDA must determine whether an applicant is competent and qualified. Sets the amount of the license fee and late penalty. Authorizes MDA to suspend or cancel a person's bulk milk hauler and sampler license.

8 **Milk tank trucks.** Requires an annual permit and inspection for each farm bulk milk pickup tanker, milk transport, and tanker used to transport milk products. Sets the permit fee amount. Authorizes MDA to appoint a qualified person to perform these inspections.

9 **Grade A dairy farm permitting; water well distance requirement.** Requires possession of a Grade A dairy farm permit to sell or distribute Grade A milk from a dairy farm. Prohibits permit denial simply because the dairy farm does not meet the required minimum distance between a water well and the dairy farm, as established in MDA rules. Establishes permit-eligibility requirements pertaining to water wells.

10 **Grade A dairy farm inspection; fees.** Requires Grade A farms to be inspected at least once every six months. Sets the inspection fee amount. Requires the processor or marketing organization to pay a farm's inspection fees. If a farm requires additional re-inspections, the processor or marketing organization must pay an additional fee. The amount of the Grade A re-inspection fee would depend on the number of milk-producing animals on the farm.

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11 **Manufacturing grade dairy farm certification.** Requires an annual Grade B certification for each farm selling milk for manufacturing purposes.

12 **Manufacturing grade dairy farm inspection; fees.** Requires manufacturing-grade dairy farms to be inspected at least once every twelve months. Sets the inspection fee amount. Requires the processor or marketing organization to pay the farm's inspection fees. If a farm requires additional re-inspections, the processor or marketing organization must pay an additional fee.

13 **Dairy plant licensing and permitting.** Requires dairy plants to obtain a food-handler license and facility pre-approval from MDA. Establishes a fee of \$45 for each hour of MDA staff time. Requires a dairy plant to obtain a separate permit and satisfy the definition of Minnesota farmstead cheese established in section 2 if it desires to use the name "Minnesota farmstead cheese" to market a product.

14 **Inspections.** Requires Grade A dairy plants to be inspected at least every three months and establishes the inspection fee. Requires Grade B dairy plants to be inspected at least every six months and establishes an inspection fee based on the number of pasteurization units.

15 **Procurement fee.** Requires dairy plant operators to pay to MDA a monthly fee of 1.1 cents per hundredweight of milk purchased the previous month. Provides for the treatment of milk the producer sells out of state—the producer must pay the fee unless the out-of-state purchaser voluntarily pays the fee. Requires plant operators and producers that sell out-of-state to submit monthly reports to MDA along with the fee and to grant MDA access to all records necessary for MDA to verify compliance with this section.

16 **Selected products fee.** Requires each manufacturer to pay a fee for all fluid milk processed and milk used in the manufacture of fluid milk products sold at retail in Minnesota. The fee amount would be not less than five and not more than nine cents per hundredweight as set by MDA; MDA could not increase or decrease the fee by more than 1 cent/hundredweight in any 12-month period.
Authorizes MDA to establish a dairy consulting program to provide assistance to dairy producers experiencing problems meeting legal sanitary and quality requirements.
Authorizes MDA to use money collected via fees and penalties under this chapter to fund this program.

17 **Milk quality standards.** Provides quality standards for milk odor, appearance, consistency, bacteria levels, somatic cell counts, and temperature. Authorizes MDA to adopt standards that are more stringent than those established in this section. Provides that a dairy plant is not required to reject milk shipments in response to a violation of certain standards in this section unless MDA either suspends or revokes the plant's permit or the milk producer's Grade A permit or manufacturing grade certification.

18 **Official producer samples.** Requires an official sample from each milk producer to be analyzed for compliance with the standards specified in the previous section and for antibiotic residues at least once per month in four out of every six months. Samples must be collected from producers without providing advance notice. Samples must be collected by a licensed sampler.

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19 **Monthly reporting.** Requires dairy plants that buy milk from producers to report at least one representative milk test result to MDA in at least four out of every six months. The laboratory may submit the results to MDA. Results must be submitted to MDA electronically and no later than seven days after the laboratory obtains the test results.

20 **Enforcement.** Requires MDA to suspend a milk producer's permit or certification if three of the last five samples exceed an applicable quality standard. MDA must warn the producer when two of the last four samples violate a standard.

21 **Laboratory certification.** Requires laboratories to obtain approval or certification to test Grade A milk samples. Certified or approved labs must obtain a permit from MDA. Establishes fees for the approval or certification of laboratory analyses and tests.

22 **Milk bought by weight; testing methods.** Establishes the formula and factors that must be used when purchasing milk from producers. Establishes a misdemeanor crime for certain actions by milk testers, samplers, weighers, graders, and purchasers.

23 **Adulterated dairy products.** Prohibits selling or knowingly buying adulterated dairy products. Prohibits manufacturing food for human consumption from adulterated milk or cream unless authorized by federal law. Defines what constitutes adulterated milk. Requires bulk milk pickup tankers to be tested for beta lactam and other drug residues. If a bulk tanker tests positive for beta lactam residue, the tanker operator must follow up with testing of all milk producers that contributed to the positive load of milk. Requires milk producers to be tested for beta lactam at least once a month for four out of every six months. Requires the test results to be submitted to MDA electronically. Provides penalties for dairy producers with drug residue in their milk, including permit/certification suspension, compensating the purchaser for the value of the entire milk load, and an administrative penalty of up to \$1,000.

24 **Limitation on sale.** Requires nearly all milk or fluid products to be pasteurized and cooled. This requirement would not apply to milk, cream, or skim milk occasionally secured or purchased for personal use by a consumer at the place or farm where the milk is produced. Specifies that pasteurized milk and fluid milk products offered or exposed for sale must be labeled or otherwise designated as pasteurized and the plant number must be included on the product label.

25 **Cooling after pasteurization.** Requires all pasteurized milk and fluid milk products to be cooled to 45 degrees or less immediately following pasteurization unless the milk or product is to be cultured immediately.

26 **Manufacture of cheese; requirements in process.** Requires all cheese to be produced from pasteurized milk or milk products, subjected to heat treatment equivalent to pasteurization, or subjected to aging for at least 60 days after manufacture at a temperature no lower than 35 degrees.

27 **Recombinant bovine growth hormone labeling.** Authorizes products containing milk, cream, or any by-product of milk or cream to be labeled as rBGH free only if produced in accordance with this section. Requires a dairy plant purchasing milk or cream to be sold as rBGH-free to possess an affidavit from each milk producer asserting that the producer's cows have not and will not be administered rBGH without 30 days advanced written notice. As an alternative, the plant could provide one affidavit certifying that the plant's procedures

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verify that producers are not using rBGH. If a dairy plant provides milk or cream to a processor or manufacturer to be sold as an rBGH-free product, the plant must certify that the producers supplying the plant have executed and delivered affidavits as required by this section. Requires rBGH-free milk or cream to be kept separate from other milk during all stages of storage, transportation, and processing until the dairy products are in final packaged form. Requires dairy plants and product processors/manufacturers to maintain records that demonstrate this separation.

28 to 31 **Dairy Trade Practices Act.** Prohibits a processor of milk, fluid cream, eggnog, yogurt and all other Class 1 or 2 dairy products from selling below cost plus 75 percent of actual processing and handling costs. Prohibits a wholesaler from selling these products at less than cost. Prohibits a retailer from selling these products at less than cost. Provides limited exceptions. Authorizes a person injured by a violation of the Dairy Trade Practices Act to commence legal action and recover damages and costs of the legal action, including reasonable attorney fees.

32 **Annual suspension of dairy trade practices act.** Suspends Dairy Trade Practices Act restrictions during “Dairy Month” each June.

33 **Applicability.** Technical; updates a cross-reference.

34 **Repealer.** Repeals the entirety of Minnesota Statutes, chapter 32.