HOUSE . . . . . No. 3439

Substituted by the House, on motion of Mr. Kennedy of Everett, for a bill with the same title (House, No. 2061). May 6.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Sixty-Three.

AN ACT REGULATING THE MAINTENANCE AND OPERATION OF AND THE SALE OF FOODS AND BEVERAGES THROUGH VENDING MACHINES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 186 of chapter 94 of the General Laws is hereby amended by adding after clause Twelfth, as appearing in section 1 of chapter 598 of the acts of 1948, the following clause: —

Thirteenth, If it has been prepared, packed or stored under unsanitary conditions whereby it may have become contaminated with filth, or rendered injurious to health.

SECTION 2. Said chapter 94 is hereby further amended by striking out section 305A, as amended by section 5 of chapter 362 of the acts of 1937, and inserting in place thereof the following section: —

Section 305A. Unless another penalty is provided under this chapter, whoever for the purpose of sale manufactures, prepares, packs, cans, bottles, keeps, exposes, stores, handles, serves or distributes in any manner, food in or from an unclean, unsanitary or unhealthful establishment, place or vehicle or under unclean, unsanitary or unhealthful conditions shall be punished for the first offense by a fine of not more than one hundred dollars and for a subsequent offense by a fine of not more than five hundred dollars. For the purposes of this section, the word "food" shall mean and include all articles, whether simple, mixed, or compound, used or intended to be used for food or drink, confectionery or condiment, by human beings, except milk and cream. The commissioner of public health may promulgate and adopt such rules and regulations

as he may deem necessary for the enforcement of this secton. Any person violating any rule or regulation promulgated and adopted hereunder shall be punished for the first offense not more than one hundred dollars or for a subsequent offense by a fine of not more than five hundred dollars.

SECTION 3. Said chapter 94 is hereby further amended by inserting after section 307, under the caption VENDING MACHINES, the following six sections: —

Section 308. For the purposes of this section and sections three hundred and nine to three hundred and twelve, inclusive, the following words shall have the following meanings: —

"Vending Machine" shall mean any self-service device offered for public use which, upon insertion of a coin, coins, token, paper currency, or by other means, dispenses servings of food or beverage, either in bulk or in package.

"Machine Location" shall mean the room, enclosure, space, area, building or building complex where one or more vending machines are installed and operated upon the premises of a single owner or tenant.

"Commissary" shall mean catering establishment, restaurant or any other place in which food, beverage and ingredients are processed or prepared and from which vending machines are serviced.

"Operator" shall mean any person, who by contact, agreement or ownership takes responsibility for furnishing, installing, servicing, operating or maintaining one or more vending machines.

Section 309. (*a*) No person shall engage in the operation of one or more vending machines in the commonwealth without a license issued by the commissioner as hereinafter provided.

(*b*) Any person desiring to operate one or more vending machines in the commonwealth shall make application in writing for a license to the commissioner on forms provided by him stating: —

(1) His name, address, whether such applicant is an individual, firm or corporation, or the name and address of each partner if a partnership.

(2) The address of his principal place of business.

(3) The location of the commissary or commissaries.

(4) The signature of the applicant or applicants.

36 (*c*) A numbered operator's license which shall be valid
37 throughout the commonwealth shall be issued to the appli-
38 cant by the commissioner after compliance by the operator
39 with the applicable provisions of this chapter. Such license
40 shall not be transferable. The annual fee for each operator
41 shall be as follows: —

42 (1) For the operation solely of vending machines vending
43 portions not in excess of two cents:

1 location with 5 or less machines	$0.50
1 location with more than 5 machines up to 10 locations	1.00
11 to 20 locations	5.00
21 to 50 locations	10.00
51 to 100 locations	15.00
101 to 200 locations	20.00
201 to 300 locations	25.00
301 or more locations	30.00

44 (2) For the operation solely of vending machines vending
45 portions not in excess of nine cents:

1 location with 5 or less machines	$0.50
1 location with more than 5 machines up to 10 locations	2.00
11 to 20 locations	10.00
21 to 50 locations	20.00
51 to 100 locations	30.00
101 to 200 locations	40.00
201 to 300 locations	50.00
301 or more locations	60.00

46 (3) For the operation solely of vending machines dispensing
47 pre-mixed carbonated beverages sealed in individual containers:

1 location with 5 or less machines	$0.50
1 location with more than 5 machines up to 10 locations	5.00
11 to 20 locations	10.00
21 to 50 locations	25.00
51 to 100 locations	50.00
101 to 200 locations	100.00
201 to 300 locations	150.00
301 or more locations	200.00

48 (4) For the operation of vending machines except as specifi-
49 cally provided for above:

1 location with 5 or less machines	$0.50
1 location with more than 5 machines up to 10 locations	25.00
11 to 50 locations	100.00
51 or more locations	200.00

(*d*) A label bearing the operator's license number, of a size and style approved by the commissioner, shall be conspicuously displayed at each machine location.

(*e*) In order to hold and retain an operator's license, the operator shall maintain for the inspection by the commissioner, a list of all vending machine locations within the commonwealth operated by him and of all commissaries or other establishments from which such vending machines are serviced. Such information shall be available to the commissioner upon request.

Section 310. (*a*) An operator's license may be temporarily suspended by the commissioner for violation of any of the provisions of this chapter, or may be revoked upon serious or repeated violations of such provisions in the manner provided by section three hundred and eleven.

(*b*) Whenever the commissioner finds unsanitary or other conditions involving the operation of any vending machine or commissary which, in his opinion, involve a substantial hazard to the public health, he may, without notice or hearing, issue a written order to the operator citing the existence of such condition and specifying corrective action to be taken and, if deemed necessary, requiring immediate discontinuance of operation. Such order shall be effective immediately and shall apply only to the vending machine, commissary or product involved. Any operator to whom such order is issued shall comply therewith, but upon petition to the commissioner shall be afforded a hearing as soon as possible. When necessary corrective action has been taken and on the request of the operator, the commissioner shall make a new inspection to determine whether operations may be resumed.

(*c*) After any hearing held under the provisions of this section, the commissioner shall sustain, modify or rescind any notice or order considered in the hearing.

(*d*) Any operator whose license has been suspended, may at any time make application for the reinstatement of the license. Within ten days after the receipt of a written application, accompanied by, or including, a statement signed by the operator to the effect that the violated term or terms of this chapter have been complied with, the commissioner shall make a new inspection. If the applicant is again complying with the pro-

90 visions of sections three hundred and eight to three hundred
91 and twelve, inclusive, the license shall be reinstated.
92 *Section 311.* (*a*) The commissioner, after proper identifi-
93 cation, shall be permitted to enter, at any reasonable time,
94 upon any private or public property where vending machines
95 or commissaries are operated, or from which such machines
96 are otherwise serviced, for the purpose of inspecting the same.
97 The operator shall make provision upon the request of the
98 commissioner for the commissioner to have access, either in
99 company with an employee or otherwise, to the interior of all
100 vending machines operated by him within the commonwealth
101 insofar as it is within the operator's means to obtain permis-
102 sion for the commissioner to enter restricted premises.
103 (*b*) Whenever the commissioner discovers a violation of any
104 applicable provision of this chapter he shall notify the operator
105 concerned. Such notice shall (1) describe the condition found
106 and state which section of this chapter has been violated; (2)
107 provide a specific and reasonable period of time for the cor-
108 rection of such condition; and (3) state that a hearing on in-
109 spection findings shall be provided upon written request filed
110 with the commissioner within ten days of receipt of the notice.
111 The commissioner may advise the operator in writing that un-
112 less such violations are corrected within the specified period of
113 time, any license issued under the provisions of this chapter
114 may be suspended or revoked, in accordance with the provi-
115 sions of section three hundred and ten.
116 *Section 312.* Foods, beverages and ingredients from com-
117 missaries outside the commonwealth may be sold within the
118 commonwealth if such commissaries conform to the provisions
119 of the food establishment sanitation regulations of the com-
120 monwealth, or to substantially equivalent provisions and the
121 operator holds a valid license issued by the commissioner.
122 To determine the extent of compliance with such provisions,
123 the commissioner may accept reports from the responsible au-
124 thority in such jurisdictions outside the commonwealth where
125 such commissaries are located.
126 *Section 313.* Whoever violates any provision of sections
127 three hundred and eight to three hundred and twelve, inclu-
128 sive, or who continues to operate a vending machine after his
129 license has been suspended or revoked, shall be punished for

the first offense by a fine of not more than one hundred dollars and for a subsequent offense by a fine of not more than five hundred dollars.

SECTION 4. The provisions of this act are severable and if any section, paragraph, sentence, clause or phrase is declared unconstitutional or invalid for any reason the remainder shall not be affected thereby.