

LEGISLATIVE BILL 1413

Approved by the Governor March 23, 1972

Introduced by Maurice A. Kremer, 34th District

AN ACT to provide for the adoption of a uniform act relating to weights and measures; to establish standards; to define powers and duties; to define offenses; to provide for penalties; and to repeal sections 89-101 to 89-113, 89-115 to 89-141, 89-154 to 89-169, and 89-171 to 89-182, Reissue Revised Statutes of Nebraska, 1943, and section 89-114, Revised Statutes Supplement, 1969.

Be it enacted by the people of the State of Nebraska,

Section 1. As used in this act, unless the context otherwise requires:

(1) Weights and measures shall mean all weights and measures of every kind, instruments and devices for weighing and measuring, and any appliance and accessories associated with any or all such instruments and devices.

(2) Weight, as used in connection with any commodity, shall mean net weight.

(3) Correct, as used in connection with weights and measures, shall mean conformance to all applicable requirements of this act.

(4) Primary standards shall mean the physical standards of the state which serve as the legal reference from which all other standards and weights and measures are derived.

(5) Secondary standards shall mean the physical standards which are traceable to the primary standards through comparisons, using acceptable laboratory procedures, and used in the enforcement of weights and measures laws and regulations.

(6) Director shall mean the Director of Agriculture of the State of Nebraska.

(7) Person shall mean both plural and singular, as the case demands, and includes individuals, partnerships, corporations, companies, societies, and associations.

(8) Sale from bulk shall mean the sale of commodities when the quantity is determined at the time of sale.

(9) Package shall mean any commodity put up or packaged in any manner in advance of sale in units suitable for either wholesale or retail sale.

Sec. 2. The system of weights and measures in customary use in the United States and the metric system of weights and measures are jointly recognized, and either one or both of these systems shall be used for all commercial purposes in the state. The definitions of basic units of weight and measure, the tables of weight and measure, and weights and measures equivalents as published by the National Bureau of Standards are recognized and shall govern weighing and measuring equipment and transactions in the state.

Sec. 3. Weights and measures that are traceable to the United States prototype standards supplied by the federal government, or approved as being satisfactory by the National Bureau of Standards, shall be the state primary standards of weights and measures, and shall be maintained in such calibration as prescribed by the National Bureau of Standards. All secondary standards may be prescribed by the director and shall be verified upon their initial receipt, and as often thereafter as deemed necessary by the director.

Sec. 4. The specifications, tolerances, and other technical requirements for commercial weighing and measuring devices as adopted by the National Conference on Weights and Measures and published in National Bureau of Standards Handbook 44, 4th Edition, 1971, entitled Specifications, Tolerances, and Other Technical Requirements for Commercial Weighing and Measuring Devices, shall apply to commercial weighing and measuring devices in the state, except insofar as modified or rejected by regulation.

Sec. 5. The director shall:

(1) Maintain traceability of the state standards to the National Bureau of Standards.

(2) Enforce the provisions of this act.

(3) Promulgate reasonable regulations for the enforcement of this act, including but not limited to the registration of weighing and measuring device repairmen, pit installation requirements, adoption of such additional standards as are not specifically provided for

in this act and such additional reasonable regulations regarding: (a) The varieties or kinds of devices, (b) attachments or parts entering into the construction or installation of weights and measures or weighing or measuring appliances, which shall tend to secure correct results in the use of such appliances, and (c) reasonable registration fees for weighing and measuring devices to be established by the director following a public hearing held for that purpose, which regulations shall have the force and effect of law.

(4) Establish standards of weight, measure, or count, reasonable standards of fill, and standards for the presentation of cost per unit information for any packaged commodity.

(5) Grant any exemptions from the provisions of this act or any regulations promulgated pursuant thereto, when appropriate to the maintenance of good commercial practices within the state.

(6) Conduct investigations to insure compliance with this act.

(7) Delegate to appropriate personnel any of these responsibilities for the proper administration of the director's office.

(8) Test annually the standards of weight and measure used by any city or county within the state, and approve the same when found to be correct.

(9) Inspect and test weights and measures kept, offered, or exposed for sale.

(10) Inspect and test annually to ascertain if they are correct, weights and measures commercially used (a) in determining the weight, measure, or count of commodities or things sold, or offered or exposed for sale, on the basis of weight, measure, or count, or (b) in computing the basic charge or payment for services rendered on the basis of weight, measure, or count.

(11) Test all weights and measures used in checking the receipt or disbursement of supplies in every institution, for the maintenance of which funds are appropriated by the Legislature of the state.

(12) Approve for use, and may mark, such weights and measures as the director finds to be correct, and shall reject and mark as rejected such weights and measures as the director finds to be incorrect. Weights and measures that have been rejected may be seized if not

corrected within the time specified or if used or disposed of in a manner not specifically authorized. The director shall condemn and may seize weights and measures found to be incorrect that are not capable of being made correct.

(13) Weigh, measure, or inspect packaged commodities kept, offered, or exposed for sale, sold, or in the process of delivery, to determine whether they contain the amounts represented and whether they are kept, offered, or exposed for sale in accordance with this act or regulations promulgated pursuant thereto. In carrying out the provisions of this section, the director shall employ recognized sampling procedures such as are designated in National Bureau of Standards Handbook 67, entitled Checking Prepackaged Commodities.

(14) Prescribe, by regulation, the appropriate term or unit of weight or measure to be used, whenever the director determines in the case of a specific commodity that an existing practice of declaring the quantity by weight, measure, numerical count, or combination thereof, does not facilitate value comparisons by consumers, or offers an opportunity for consumer confusion.

(15) Allow reasonable variations from the stated quantity of contents, which shall include those caused by loss or gain of moisture during the course of good distribution practice or by unavoidable deviations in good manufacturing practice only after the commodity has entered intrastate commerce.

(16) Require all persons who maintain or have in their possession for use in commerce any weighing or measuring device to register such device annually with the director upon forms furnished by the director and to pay the registration fees as prescribed.

Sec. 6. When necessary for the enforcement of this act or regulations promulgated pursuant thereto, the director is:

(1) Authorized to enter any commercial premises during normal business hours, except that in the event such premises are not open to the public, the director shall first present his credentials and obtain consent before making entry thereto, unless a search warrant has previously been obtained.

(2) Empowered to issue stop-use, hold, and removal orders with respect to any weights and measures commercially used, and stop-sale, hold, and removal

orders with respect to any packaged commodities or bulk commodities kept, offered, or exposed for sale.

(3) Empowered to seize, for use as evidence, without formal warrant, any incorrect or unapproved weight, measure, package, or commodity found to be used, retained, offered, or exposed for sale or sold in violation of the provisions of this act or regulations promulgated pursuant thereto.

(4) Empowered to stop any commercial vehicle from which commodities or things are sold, or offered or exposed for sale, on the basis of weight, measure or count and, after presentment of his credentials, inspect the contents, require that the person in charge of that vehicle produce any documents in his possession concerning the contents, and require him to proceed with the vehicle to some specified place for inspection.

(5) With respect to the enforcement of this act, the director is hereby vested with special police powers, and is authorized to arrest, without formal warrant, any violator of this act.

Sec. 7. Any weights and measures official appointed for a county or city shall have the powers enumerated by city ordinance or county resolution insofar as those powers do not conflict with the provisions of this act and regulations promulgated thereunder; Provided, the director may, if he finds it in the public interest, inspect the work of such local officials and require that the weights and measures program maintained by such officials be equal to the protection afforded the public by this act and the regulations promulgated thereunder. To avoid dual registration of weights and measures by state, city and county officials, the director may grant exemptions as provided by section 5 of this act.

Sec. 8. No person shall sell, offer, or expose for sale less than the quantity he represents, nor take any more than the quantity he represents when, as buyer, he furnishes the weight or measure by means of which the quantity is determined.

Sec. 9. No person shall misrepresent the price of any commodity or service sold, offered, exposed, or advertised for sale by weight, measure, or count, nor represent the price in any manner calculated or tending to mislead or in any way deceive a person.

Sec. 10. Except as otherwise provided by the director, commodities in liquid form shall be sold by

liquid measure or by weight, and commodities not in liquid form shall be sold only by weight, by measure, or by count, so long as the method of sale provides accurate quantity information.

Sec. 11. Whenever the quantity is determined by the seller, bulk sales in excess of twenty dollars and all bulk deliveries of heating fuel shall be accompanied by a delivery ticket containing the following information:

(1) The name and address of the vendor and purchaser.

(2) The date delivered.

(3) The quantity delivered and the quantity upon which the price is based, if this differs from the delivered quantity.

(4) The identity in the most descriptive terms commercially practicable, including any quality representation made in connection with the sale.

(5) The count of individually wrapped packages, if more than one.

Sec. 12. Except as otherwise provided in this act or by regulations promulgated pursuant thereto, any package kept for the purpose of sale or offered or exposed for sale shall bear on the outside of the package a definite, plain, and conspicuous declaration of:

(1) The identity of the commodity in the package, unless the same can easily be identified through the wrapper or container;

(2) The quantity of contents in terms of weight, measure, or count; and

(3) The name and place of business of the manufacturer, packer, or distributor, in the case of any package kept, offered, or exposed for sale, or sold in any place other than on the premises where packaged.

Sec. 13. In addition to the declarations required by section 12 of this act, any package being one of a lot containing random weights of the same commodity and bearing the total selling price of the package shall bear on the outside of the package a plain and conspicuous declaration of the price per single unit of weight.

Sec. 14. Whenever a packaged commodity is advertised in any manner with the retail price stated, there shall be closely and conspicuously associated with the retail price a declaration of quantity as is required by law or regulation to appear on the package. Where a dual declaration is required, only the declaration that sets for the quantity in terms of the smaller unit of weight or measure need appear in the advertisement.

Sec. 15. It shall be unlawful for any person to:

(1) Use or have in possession for use in commerce any incorrect weight or measure;

(2) Remove any tag, seal, or mark from any weight or measure without specific written authorization from the proper authority;

(3) Hinder or obstruct any weights and measures official in the performance of his duties; or

(4) Maintain or have in his possession for use in commerce any weight or measure that has not been registered in accordance with the provisions of this act.

Sec. 16. The director is authorized to apply to any court of competent jurisdiction for a temporary or permanent injunction restraining any person from violating any provision of this act.

Sec. 17. Whenever there shall exist a weight or measure or weighing or measuring device in or about any place in which or from which buying or selling is commonly carried on, there shall be a rebuttable presumption that such weight or measure or weighing or measuring device is regularly used for the business purposes of that place.

Sec. 18. The director shall collect annual registration fees for weights and measures as are established by regulations promulgated for that purpose in accordance with the provisions of section 5 of this act and all such fees collected shall be paid to the state treasury and by the State Treasurer credited to the Weights and Measures Administrative Fund, which fund is hereby created. All money so collected shall be appropriated to the uses of the Department of Agriculture for the purpose of administering the provisions of this act. Any unexpended balance in such fund at the close of any biennium shall, when reappropriated, be available for the uses and purposes of the fund for the succeeding biennium; otherwise it shall lapse into the General Fund.

The registration fees provided for in this act shall constitute a lien on the weights and measures, registered and approved for use in this state until such fees are paid, and the director may sue therefor in the name of the state.

Sec. 19. Any person who violates any provision of this act or regulations promulgated pursuant thereto, for which a specific penalty has not been prescribed, shall be guilty of a misdemeanor, and upon a first conviction thereof shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars, or by imprisonment for not more than three months, or both. Upon a subsequent conviction thereof, he shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars or by imprisonment for up to one year, or both.

Sec. 20. The adoption of this act or any of its provisions shall not affect any regulations promulgated pursuant to the authority of any earlier enabling statute unless inconsistent with this act or modified or revoked by the director.

Sec. 21. This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Sec. 22. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration of invalidity shall not effect the validity of the remaining portions thereof.

Sec. 23. That sections 89-101 to 89-113, 89-115 to 89-141, 89-154 to 89-169, and 89-171 to 89-182, Reissue Revised Statutes of Nebraska, 1943, and section 89-114, Revised Statutes Supplement, 1969, are repealed.