

LEGISLATIVE BILL 161

Approved by the Governor March 20, 2003

Introduced by Kremer, 34

AN ACT relating to the Weights and Measures Act; to amend sections 89-183, 89-185, 89-186, 89-187.02, and 89-188, Reissue Revised Statutes of Nebraska, and sections 89-187 and 89-1,100, Revised Statutes Supplement, 2002; to change provisions relating to standards, regulations, and fees; to redefine terms; to harmonize provisions; to repeal the original sections; and to declare an emergency.

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

Section 1. Section 89-183, Reissue Revised Statutes of Nebraska, is amended to read:

89-183. For purposes of the Weights and Measures Act:

(1) Actual cost means all the costs associated with the enforcement of the act, including overhead, administration, personnel, and equipment expenses;

(2) Certificate of Conformance means a National Type Evaluation Program Certificate of Conformance issued by (a) the National Institute of Standards and Technology or (b) the National Conference on Weights and Measures or a National Institute of Standards and Technology authorized laboratory establishing that the commercial weighing and measuring device, based on testing, meets the requirements of National Institute of Standards and Technology Handbook 44;

(3) Commercial weighing and measuring device means any weights and measures or weighing and measuring device used or employed in commerce in (a) establishing the size, quantity, extent, area, or measurement of any commodity sold, offered, or submitted for hire, (b) computing any basic charge or payment for services rendered on the basis of weight, measure, or count, or (c) establishing eligibility for any award. A commercial weighing and measuring device also includes any accessory attached to or used in connection with a commercial weighing or measuring device when such accessory is so designed or installed that its operation affects or may affect the accuracy of the device;

(4) Commodity means any service or item or any combination of items forming a distinctive product sold in commerce which is affected by any determination of weight, measure, or count;

(5) Correct, when used in connection with commercial weighing and measuring devices, means conformance to all applicable requirements of the act;

(6) Department means the Department of Agriculture or its authorized agent;

(7) Director means the Director of Agriculture or his or her designated employee, representative, or authorized agent;

(8) Kept for sale, in any of its variant forms, means the possession of commodities by a business which sells such commodities;

(9) Modification or modified, when used in connection with commercial weighing and measuring devices, means any change which does not alter the original metrological design characteristics as specified by the device manufacturer or National Type ~~Evaluation~~ Evaluation Program technical policies;

(10) Net drained weight means the weight of a commodity excluding any materials, substances, or items not considered to be part of the commodity. Materials, substances, or items not considered to be part of the commodity include free liquid, containers, conveyances, bags, wrappers, packaging materials, labels, individual piece coverings, decorative accompaniments, prizes, and coupons;

(11) Net weight means the weight of a commodity excluding any materials, substances, or items not considered to be part of the commodity. Materials, substances, or items not considered to be part of the commodity include containers, conveyances, bags, wrappers, packaging materials, labels, individual piece coverings, decorative accompaniments, prizes, and coupons;

(12) Package means any commodity put up or packaged in any container in advance of sale in units suitable for sale;

(13) Person means any individual, partnership, limited liability company, association, corporation, or organized group of persons, whether incorporated or not;

(14) Primary standards means the physical standards of the state

which serve as the legal reference from which all other standards are derived;

(15) Sale, in any of its variant forms, means sale, to barter, exchange, offer for sale, or expose for sale, in any of their variant forms, or otherwise supply;

(16) Sale from bulk means sale, in any of its variant forms, of commodities when the quantity is determined at the time of sale;

(17) Secondary standards means the physical standards which are traceable to the primary standards through comparisons using acceptable laboratory procedures. Such standards shall be used in the sale of a commodity or in the verification of weights and measures or weighing and measuring devices for accuracy;

(18) Tare weight means the weight of containers, conveyances, bags, wrappers, packaging materials, labels, individual piece coverings, decorative accompaniments, prizes, coupons, or items not considered to be part of the commodity deducted from the gross weight to determine the weight of the commodity;

(19) Weighing and measuring device means all instruments and devices of every kind used to determine the quantity of any commodity and includes weights and measures and any appliances and accessories associated with any such instruments and devices except meters, appliances, and accessories which are exempted from the requirements of the act pursuant to subdivision (5) of section 89-187;

(20) Weighing and measuring establishment means a location with one or more commercial weighing and measuring devices or any operation which employs commercial weighing and measuring devices which are mobile; and

(21) Weight, when used in connection with any commodity, means net weight, except when a commodity is sold by drained weight, the term means net drained weight.

Sec. 2. Section 89-185, Reissue Revised Statutes of Nebraska, is amended to read:

89-185. Standards that are traceable to the United States prototype standards supplied by the federal government or approved as being satisfactory by the National Institute of Standards and Technology shall be the primary standards of measurement and shall be maintained so that they are traceable to in such calibration as prescribed by the National Institute of Standards and Technology. 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. 3. Section 89-186, Reissue Revised Statutes of Nebraska, is amended to read:

89-186. (1) The Legislature hereby adopts by reference the following:

(a) The standards of the National Conference on Weights and Measures published in National Institute of Standards and Technology Handbook 44 entitled Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices as it ~~exists~~ existed on ~~August 28, 1999~~ January 1, 2003, except Section 3.31. Vehicle - Tank meters. UR.2.2. Ticket Printers; Customer Ticket, Section 2.20. Scales, N.3. Minimum Test Weights and Test Loads; and Table 4, are not adopted. In addition to the language found in Section 3.30. Liquid-Measuring Devices, S.1.6.4., S.1.6.5., UR.3.2., and UR.3.3. of such handbook, any computing device in which a product or grade is offered for sale at more than one unit price may also compute at the lowest possible unit price for such transaction. All prices shall still be displayed or posted on the face of the dispenser. Such handbook shall govern all commercial and law enforcement weighing and measuring devices in the state;

(b) The Uniform Regulation for the Method of Sale of Commodities of the National Conference on Weights and Measures published in National Institute of Standards and Technology Handbook 130 entitled Uniform Laws and Regulations as it ~~exists~~ existed on ~~August 28, 1999~~ January 1, 2003. Such handbook shall be used to determine the proper units of measurement to be used in the keeping for sale or sale of commodities;

(c) The Uniform Packaging and Labeling Regulation of the National Conference on Weights and Measures published in National Institute of Standards and Technology Handbook 130 entitled Uniform Laws and Regulations as it ~~exists~~ existed on ~~August 28, 1999~~ January 1, 2003. Such handbook shall govern the packaging and labeling by weight, measure, or count of commodities kept for sale or sold in this state; and

(d) The procedures designated in National Institute of Standards and Technology Handbook 133 entitled Checking the Net Contents of Packaged Goods as it ~~exists~~ existed on ~~August 28, 1999~~ January 1, 2003.

(2) Copies of the handbooks adopted by reference in this section

shall be filed with the Secretary of State, Clerk of the Legislature, and Department of Agriculture.

(3) Whenever there exists an inconsistency between the provisions of the Weights and Measures Act other than this section and any of the handbooks adopted by reference, the requirements of such provisions of the act shall control.

Sec. 4. Section 89-187, Revised Statutes Supplement, 2002, is amended to read:

89-187. The director shall:

(1) Maintain traceability of the primary standards to the National Institute of Standards and Technology;

(2) Enforce the provisions of the Weights and Measures Act;

(3) Adopt and promulgate reasonable rules and regulations for the enforcement of the act including the following:

(a) Requirements for the voluntary registration of sales and repair personnel for commercial weighing and measuring devices including:

(i) Registration fees for such personnel which shall not exceed the actual cost to defray the operation of the voluntary registration program;

(ii) (A) Qualifications for registration, which may include examinations, (B) performance standards to maintain registration, (C) types of equipment necessary for the work to be performed by the personnel, (D) responsibilities and privileges of registration, and (E) revocation and suspension of such registration and probation of the registrant; and

(iii) Minimum standards for the installation and maintenance of commercial weighing and measuring devices;

(b) Additional standards not specifically provided for in the act;

(c) Standards for (i) attachments or parts entering into the construction or installation of commercial weighing and measuring devices which shall tend to secure correct results in the use of such devices and (ii) the setting of laboratory fees which shall not exceed the actual cost for testing, correcting, calibrating, and verifying secondary standards and the establishment of standard laboratory operating procedures;

(d) Requirements for the suitable use of commercial weighing and measuring devices; and

(e) Guidelines for the appropriate method of weighing or measuring whenever the director determines that such guidelines would further the purpose of the act;

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

(5) Upon an application filed with the department by the applicant, grant exemptions, including specific exemptions for single-use commercial weighing and measuring devices, from the provisions of the act or the rules and regulations when the applicant on such application provides assurances, acceptable to the director, that such exemption is appropriate to the maintenance of good commercial practices within the state. Notwithstanding any other provision of the act, meters used by a public utility system for the measurement of electricity, natural or manufactured gas, water, or the usage of communication services, the appliances or accessories associated with such meters, and all weighing and measuring devices inspected or tested by the Public Service Commission shall be exempt from the registration, inspection, and testing requirements of the act, except that this exemption shall not apply to meters which determine the weight or measurement of motor fuel;

(6) Conduct investigations to insure compliance with the act;

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

(8) In his or her discretion, inspect and test weighing and measuring devices kept for sale or sold;

(9) Inspect and test annually and from time to time, as in the director's judgment seems necessary, to ascertain whether commercial weighing and measuring devices are correct;

(10) Register and test as far as practical all commercial weighing and measuring devices used in checking the receipt or disbursement of supplies in every institution for which funds are appropriated by the Legislature;

(11) Test annually and at the request of the Nebraska State Patrol all weighing and measuring devices used for the enforcement of the provisions of sections 60-329, 60-331, and 60-6,294. The agency responsible for such weighing and measuring devices shall pay the department for the actual cost of such tests. The department shall bill test fees to such agency upon completion of the test;

(12) Approve for use and may mark commercial weighing and measuring devices which the director finds to be correct and shall reject and mark or

tag as rejected such commercial weighing and measuring devices which the director finds to be not correct or not registered and inspected in accordance with the Weights and Measures Act. Commercial weighing and measuring devices that have been rejected may be seized if not made correct within the time specified or if used or disposed of in a manner not specifically authorized. The director shall condemn and may seize commercial weighing and measuring devices which are found not to be correct and not capable of being made correct;

(13) Weigh, measure, or inspect commodities kept for sale, sold, or in the process of delivery to determine whether they contain the amounts represented and whether they are kept for sale or sold in accordance with the act or the rules and regulations. When commodities are found not to contain the amounts represented or are found to be kept for sale, sold, or in the process of delivery in violation of the act, the director may issue stop-sale, hold, or removal orders and may mark or tag such commodities as being in violation of the act. In carrying out the provisions of this section, the director shall employ recognized procedures pursuant to subdivisions (1) (b) through (d) of section 89-186;

(14) Provide for the weights and measures training of inspection personnel and adopt and promulgate by rule and regulation minimum training requirements which shall be met by all inspection personnel;

(15) Adopt and promulgate rules and regulations prescribing the appropriate term or unit of measurement 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;

(16) 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;

(17) Verify advertised prices, price representations, and point-of-sale systems, as deemed necessary, to determine: (a) The accuracy of prices, quantity, and computations; (b) the correct use of the equipment; and (c) if such systems utilize scanning or coding means in lieu of manual entry, the accuracy of prices and quantity printed or recalled from a data base;

(18) On or before July 1 of each year, notify all persons who have registered any commercial weighing or measuring device of the amount of fees which are due and that ~~such the fees shall be~~ are due on August 1 of each year and shall be delinquent after such date;

(19) Require all persons who operate a weighing and measuring establishment to obtain a permit to operate such establishment pursuant to section 89-187.01 and to pay to the department an application permit fee pursuant to section 89-187.02; and

(20) ~~Set registration fees and device inspection fees in an amount not to exceed the amounts specified in this subdivision and require, on or before August 1 of each year,~~ Require all persons who operate a weighing and measuring establishment to, on or before August 1 of each year:

(a) Register each commercial weighing and measuring device with the department upon forms furnished by the director;

(b) Pay to the department a registration fee ~~not to exceed the amounts designated in column A~~ of four dollars; and

(c) Pay ~~device inspection fees~~ to the department a device inspection fee.

(i) The device inspection fee due August 1, 2003, shall be the amount in column A of subdivision (20)(c)(iii) of this section.

(ii) The device inspection fee due August 1, 2004, and each August 1 thereafter shall be set by the director on or before July 1 of each year. The director may raise or lower the device inspection fees each year to meet the criteria in this subdivision, but the fee shall not be greater than the amount in column B of subdivision (20)(c)(iii) of this section. The same percentage shall be applied to each device category for all device inspection fee increases or decreases. The director shall use the device inspection fees set for the fees due August 1, 2003, as a base for future fee increases or decreases. The director shall determine the fees based on estimated annual revenue and fiscal year-end cash fund balances as follows:

(A) The estimated annual revenue shall not be greater than one hundred seven percent of program cash fund appropriations allocated for the Weights and Measures Act; and

(B) The estimated fiscal year-end cash fund balance shall not be greater than seventeen percent of program cash fund appropriations allocated

for the act.

(iii)	<u>A</u>	<u>B</u>
<u>Scales:</u>		
Up through 35 pounds capacity	7.96	14.34
Multiunit Scales	51.00	80.37
Over 35 through 1,000 pounds capacity	15.13	25.35
Over 1,000 through 4,000 pounds capacity	31.87	51.03
Over 4,000 through 50,000 pounds capacity	36.65	58.36
Over 50,000 through 150,000 pounds capacity	39.04	62.03
Over 150,000 pounds capacity	86.87	135.40
<u>Length Measuring Devices:</u>		
Cordage or fabric	16.56	27.55
<u>Pumps:</u>		
Service Station Dispensers -- per measuring element	5.09	9.94
High-capacity service station dispensers over 20 gallons per minute -- per dispensing element	17.52	29.02
Compressed natural gas -- per dispensing element	91.65	142.74
<u>Meters:</u>		
Vehicle tank meters	14.17	23.88
Loading rack meters	31.87	51.03
Liquid petroleum gas meters	40.00	63.50
Liquid fertilizer and herbicide meters	36.65	58.36
Liquid feed meters	36.65	58.36
Cryogenic	53.39	84.04
<u>Mass Flow Metering Systems:</u>		
Mass flow meters (all liquid)	78.26	122.19;

not to exceed the amounts designated in column B:

<u>Scales:</u>	<u>A</u>	<u>B</u>	<u>Total Fees</u>
Up to 35 pounds capacity	4.00	7.00	11.00
Multiunit Scales	4.00	33.00	37.00
Over 35 to 1,000 pounds capacity	4.00	10.00	14.00
Over 1,000 to 4,000 pounds capacity ..	4.00	21.00	25.00
Over 4,000 to 50,000 pounds capacity	4.00	25.00	29.00
Over 50,000 to 150,000 pounds capacity	4.00	30.00	34.00
Over 150,000 pounds capacity	4.00	51.00	55.00
<u>Length Measuring Devices:</u>			
Cordage or fabric	4.00	9.00	13.00
<u>Pumps:</u>			
Service Station Dispensers -- per measuring element	4.00	5.00	9.00
High-capacity service station dispensers over 20 gallons per minute -- per hose	4.00	12.00	16.00
Compressed natural gas -- per hose ...	4.00	50.00	54.00
<u>Meters:</u>			
Vehicle tank meters	4.00	12.00	16.00
Loading rack meters	4.00	22.00	26.00
Liquid petroleum gas meters	4.00	20.00	24.00
Liquid fertilizer meters	4.00	27.00	31.00
Liquid feed meters	4.00	27.00	31.00
Cryogenic	4.00	50.00	54.00
<u>Mass Flow Metering Systems:</u>			
Mass flow meters (all liquid)	4.00	50.00	54.00;

and

(d) Pay (21) Require persons delinquent under subdivision (20) of this section to pay a penalty as may be required by the department of twenty-five percent per month of the annual fees due for each month any such fees are delinquent not to exceed one hundred percent of such fees. Such penalties paid shall be in addition to the annual fees due. The department's decision regarding whether penalties will be imposed shall be department may waive the penalty based upon the existence and extent of any mitigating

circumstances that have resulted in the late payment of such fees.

Sec. 5. Section 89-187.02, Reissue Revised Statutes of Nebraska, is amended to read:

89-187.02. Application for a permit to operate a weighing and measuring establishment shall be made to the director on forms prescribed and furnished by the department. Such application shall include the full name and mailing address of the applicant; the names and addresses of any partners, members, or corporate officers; the name and address of the person authorized by the applicant to receive notices and orders of the department as provided in the Weights and Measures Act; whether the applicant is an individual, partnership, limited liability company, corporation, or other legal entity; the location and type of all commercial weighing and measuring devices; and the signature of the applicant. If the applicant is an individual, the application shall include the applicant's social security number. An application for a permit shall be made prior to the operation of a weighing and measuring establishment. The application shall be accompanied by a one-time permit fee of five dollars. ~~Payment of the permit fee shall not preclude payment of~~ and the annual device registration and inspection fees required in section 89-187. The full annual device registration and inspection fees are required regardless of when during the year the device is put into operation.

Sec. 6. Section 89-188, Reissue Revised Statutes of Nebraska, is amended to read:

89-188. When necessary for the enforcement of the Weights and Measures Act or the rules and regulations adopted pursuant to the act, the director may:

(1) 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 or her credentials and obtain consent before making entry thereto unless a search warrant has previously been obtained;

(2) Issue stop-use, hold, and removal orders with respect to any commercial weighing and measuring device and stop-sale, hold, and removal orders with respect to any commodity kept for sale or sold;

(3) Seize, for use as evidence, without formal warrant, any commercial weighing and measuring device which is not correct or is not approved by the department or commodity found to be used, kept for sale, or sold in violation of the provisions of the act or the rules and regulations;

(4) Stop any commercial vehicle from which commodities are kept for sale, sold, or in the process of delivery on the basis of weight, measure, or count and, after presentment of his or her credentials, inspect the contents, require that the person in charge of that vehicle produce any documents in his or her possession concerning the contents, and require him or her to proceed with the vehicle to a specified place for inspection;

(5) Charge and collect all fees and penalties prescribed by the act and the rules or regulations;

(6) Access all books, papers, and other information necessary for the enforcement of the act. If after inspection the director finds or has reason to believe that the requirements set forth in the act are not being met, he or she shall have access to all books, papers, records, bills of lading, invoices, and other pertinent data relating to the use, sale, or representation of any commodity including weighing and measuring devices within this state;

(7) Cooperate with and enter into agreements with any person in order to carry out the purposes of the act;

(8) Inspect weighing and measuring devices which are not required to be registered upon the request of the owner of such devices and seek reimbursement for the actual cost of the inspection;

(9) Establish an authorized laboratory under ~~the National Institute of Standards and Technology~~ the National Conference on Weights and Measures, National Type Evaluation Program, and conduct field testing of weighing and measuring devices to determine if such devices meet the requirements in order to issue a Certificate of Conformance. The department shall be reimbursed for the actual cost of such tests by the person seeking such certification; and

(10) Enter into a settlement with any person regarding the disposition of any permit or cease and desist order.

Sec. 7. Section 89-1,100, Revised Statutes Supplement, 2002, is amended to read:

89-1,100. The director shall collect registration, permit, laboratory, test, and inspection fees, penalties, and money required to be reimbursed as provided for in the Weights and Measures Act and shall remit such funds to the State Treasurer. The State Treasurer shall credit such funds to the Weights and Measures Administrative Fund, which fund is hereby

created. All fees, penalties, and reimbursements collected pursuant to the act and credited to the fund shall be appropriated to the uses of the department to aid in defraying the expenses of administering the 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. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. The registration, permit, laboratory, test, and inspection fees, penalties, and money required to be reimbursed as provided for in the Weights and Measures Act shall constitute a lien on the weighing and measuring devices or standards required to be registered or approved for use in this state until such fees, penalties, and reimbursements are paid. The director may sue for such fees, penalties, and reimbursements and may seek to foreclose on any lien in the name of the state. The county attorney of the county in which the device is located or the Attorney General's office shall, upon the request of the director, take appropriate action to establish and foreclose on any such lien.

~~On or before July 15, 2001, the State Treasurer shall transfer two hundred thousand dollars from the Weights and Measures Administrative Fund to the Livestock Waste Management Cash Fund. On or before July 15, 2002, the State Treasurer shall transfer two hundred thousand dollars from the Weights and Measures Administrative Fund to the Livestock Waste Management Cash Fund.~~

Sec. 8. Original sections 89-183, 89-185, 89-186, 89-187.02, and 89-188, Reissue Revised Statutes of Nebraska, and sections 89-187 and 89-1,100, Revised Statutes Supplement, 2002, are repealed.

Sec. 9. Since an emergency exists, this act takes effect when passed and approved according to law.