

LEGISLATIVE BILL 17

Approved by the Governor March 2, 1974

Introduced by Burbach, 19

AN ACT to amend sections 89-187, 89-1,100, and 89-1,101, Revised Statutes Supplement, 1972, relating to weights and measures; to change duties; to provide exemptions; to provide for fees and the disposition and use thereof; to change the penalty provision; to repeal the original sections; and to declare an emergency.

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

Section 1. That section 89-187, Revised Statutes Supplement, 1972, be amended to read as follows:

89-187. The director shall:

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

(2) Enforce the provisions of sections 89-183 to 89-1,103.

(3) Promulgate reasonable regulations for the enforcement of sections 89-183 to 89-1,103, including but not limited to the registration of weighing and measuring device repairmen, pit scale installation requirements, adoption of such additional standards as are not specifically provided for in sections 89-183 to 89-1,103 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~~ the setting of laboratory fees for testing, correcting, calibrating, and verifying of standards of weights and measures and the establishment of standard laboratory operating procedures in accordance with the provisions of Chapter 84, article 9.

(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) Upon a verified application filed with the department, upon forms furnished by the director, grant any exemptions, including specific exemptions for single-use weighing and measuring devices, from the provisions of sections 89-183 to 89-1,103 or any regulations promulgated pursuant thereto, when such application shall provide assurances, acceptable to the director, that such exemption is when appropriate to the maintenance of good commercial practices within the state. Notwithstanding any other provision of sections 89-183 to 89-1,103, all weighing and measuring devices used by public utilities and those weighing and measuring devices inspected or tested by the Public Service Commission shall be exempt from the registration, inspection and testing requirements of sections 89-183 to 89-1,103: Provided, any such exempt weighing and measuring device may be inspected or tested by the director upon request of the person owning such device.

(6) Conduct investigations to insure compliance with sections 89-183 to 89-1,103.

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

(8) Test annually, and from time to time as in his judgment seems necessary, 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, and from time to time as in his judgment seems necessary, 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) Register and test annually all weighing and measuring devices used for the enforcement of the provisions of sections 39-722, 60-329, and 60-331.

~~142~~ 113 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.

~~143~~ 114 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 sections 89-183 to 89-1,103 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.

~~144~~ 115 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.

~~145~~ 116 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.

~~146~~ 117 Require, on or before July 1 of each year, all persons who maintain or have in their possession for use in commerce any weighing or measuring device to: (a) Register such device with the department upon forms furnished by the director; (b) pay to the department a registration fee of one dollar per device; and, in addition thereto, (c) pay inspection fees to the department in the following designated amounts:

<u>Scales:</u>	<u>Dollars</u>
<u>Up to 35 pounds capacity</u>	<u>1.00</u>
<u>Over 35 to 600 pounds capacity</u>	<u>2.00</u>
<u>Over 600 to 4,000 pounds capacity</u>	<u>5.00</u>
<u>Over 4,000 to 20,000 pounds capacity</u>	<u>9.00</u>
<u>Over 20,000 to 50,000 pounds capacity</u>	<u>12.00</u>

<u>Over 50,000 to 75,000 pounds capacity</u>	<u>14.00</u>
<u>Over 75,000 pounds capacity</u>	<u>17.00</u>
<u>Measuregraphs</u>	<u>1.00</u>
<u>Vehicle Tanks:</u>	
<u>Up to 300 gallons</u>	<u>4.00</u>
<u>Over 300 gallons to 500 gallons</u>	<u>5.00</u>
<u>Over 500 gallons to 1,000 gallons</u>	<u>6.50</u>
<u>Over 1,000 gallons to 2,000 gallons</u>	<u>8.00</u>
<u>Over 2,000 gallons to 3,000 gallons</u>	<u>9.00</u>
<u>Over 3,000 gallons to 4,000 gallons</u>	<u>12.00</u>
<u>Over 4,000 gallons to 6,000 gallons</u>	<u>14.00</u>
<u>Over 6,000 gallons</u>	<u>16.00</u>
<u>Pumps:</u>	
<u>Petroleum pumps</u>	<u>1.00</u>
<u>Liquid petroleum gas pumps</u>	<u>4.00</u>
<u>Double Pumps or Blend Pumps</u>	<u>3.00</u>
<u>Meters:</u>	
<u>Vehicle tank meters and bulk meters</u>	<u>4.00</u>
<u>Liquid petroleum gas meters</u>	<u>9.00</u>
<u>Liquid fertilizer meters</u>	<u>9.00</u>
<u>Liquid feed meters</u>	<u>9.00</u>
<u>register--such--device--annually--with--the--director--upon</u> <u>forms--furnished--by--the--director--and--to--pay--the</u> <u>registration--fees--as--prescribed:</u>	

Sec. 2. That section 89-1,100, Revised Statutes Supplement, 1972, be amended to read as follows:

89-1,100. ~~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--89-187--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 sections--89-183--to--89-1,103.---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--sections--89-183--to--89-1,103--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. The director shall collect registration, laboratory, and inspection fees in accordance with the provisions of section 89-187 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~~

fees credited to the fund shall be appropriated to the uses of the Department of Agriculture to aid in defraying the expenses of administering the provisions of sections 89-183 to 89-1,103. Any unexpended balance in such fund at the close of any year shall, when reappropriated, be available for the uses and purposes of the fund for the succeeding year; otherwise, it shall lapse into the General Fund. The registration, laboratory, and inspection fees provided for in sections 89-183 to 89-1,103 shall constitute a lien on the weights and measures or standards registered or approved for use in this state until such fees are paid, and the director may sue therefor in the name of the state.

Sec. 3. That section 89-1,101, Revised Statutes Supplement, 1972, be amended to read as follows:

89-1,101. Any person who violates any provision of sections 89-183 to 89-1,103 ~~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. 4. That original sections 89-187, 89-1,100, and 89-1,101, Revised Statutes Supplement, 1972, are repealed.

Sec. 5. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.