

LEGISLATIVE BILL 356

Approved by the Governor March 29, 1991

Introduced by Agriculture Committee:

Rogers, 41, Chairperson; Coordsen, 32;
Cudaback, 36; Elmer, 38; Hefner, 19;
Morrissey, 1; Schellpeper, 18

AN ACT relating to weights and measures; to amend sections 14-102, 66-1219, 81-216.29, 81-216.30, 89-183 to 89-188, 89-192 to 89-1,101, and 89-1,103, Reissue Revised Statutes of Nebraska, 1943; to name the Weights and Measures Act; to define and redefine terms; to eliminate a term; to change a reference to an institute; to adopt certain handbooks by reference; to provide additional standards for rules and regulations; to provide for requirements and exemptions for a Certificate of Conformance; to provide for modification and removal from service of certain weighing and measuring devices; to provide for testing of weighing and measuring devices; to provide duties for the Director of Agriculture, county attorneys, and the Attorney General; to limit existing penalties; to harmonize provisions; to provide for permits to operate certain weighing and measuring establishments and devices as prescribed; to provide for hearings; to change provisions relating to inspections; to change provisions relating to labeling; to prohibit certain acts as unlawful as prescribed and prescribe procedure for prevention; to provide for payment of certain costs; to provide for maintenance of records as prescribed; to provide for a Division of Weights and Measures as prescribed; to eliminate certain powers and duties of the Director of Agriculture and weights and measures officials; to eliminate provisions relating to weights and measures officials; to eliminate provisions relating to certain acts as unlawful; to eliminate provisions relating to prior acts and certain cities establishing standard weights and measures; and to repeal the original sections, and also sections 15-213, 16-223, 17-553,

89-189, 89-190, 89-191, and 89-1,102, Reissue Revised Statutes of Nebraska, 1943.

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

Section 1. That section 14-102, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

14-102. In addition to the powers granted in section 14-101, cities of the metropolitan class shall have power by ordinance:

Taxes, special assessments.

(1) To levy any tax or special assessment authorized by law;

Corporate seal.

(2) To provide a corporate seal for the use of the city, and also any official seal for the use of any officer, board, or agent of the city, whose duties under this act or under any ordinance require an official seal to be used. Such corporate seal shall be used in the execution of municipal bonds, warrants, conveyances, and other instruments and proceedings; as this act or the ordinances of the city require;

Regulation of public health.

(3) To provide all needful rules and regulations for the protection and preservation of health within the city; and for this purpose they may provide for the enforcement of the use of water from public water supplies when the use of water from other sources shall be deemed unsafe;

Appropriations for debts and expenses.

(4) To appropriate money and provide for the payment of debts and expenses of the city;

Protection of strangers and travelers.

(5) To adopt all such measures as they may deem necessary for the accommodation and protection of strangers and the traveling public in person and property;

Concealed weapons, firearms, fireworks, explosives.

(6) To punish and prevent the carrying of concealed weapons; and the discharge of firearms, fireworks, or explosives of any description within the city;

Weights and measures; sale of feedstuffs

Sale of foodstuffs.

(7) To regulate the weighing and measuring of hay, wood, and other articles exposed for sale, and of all coal sold or delivered within the city; to provide for, license, and regulate the inspection and sale of meats, flour, poultry, fish, milk, vegetables, and all

other provisions or articles of food exposed or offered for sale in the city; ~~to prescribe the weight and quality of bread exposed or offered for sale in the loaf; and to provide for the inspection of weights and measures or weighing apparatus;~~

Official bonds.

(8) To require ~~of~~ all officers or servants elected or appointed in pursuance of this act, to give bond and security for the faithful performance of their duties; but no officer shall become security upon the official bond of another; or upon any bond executed to the city;

Official reports of city officers.

(9) To require from any officer of the city at any time a report, in detail, of the transactions of his or her office, or any matter connected therewith;

Cruelty to children and animals.

(10) To provide for the prevention of cruelty to children and animals;

Dogs; taxes and restrictions.

(11) To regulate, license, or prohibit the running at large of dogs and other animals within the city as well as in areas within three miles of the corporate limits of the city, ~~and to guard against injuries or annoyance from such dogs and other animals, and to authorize the destruction of the dogs and other animals same when running at large contrary to the provisions of any ordinance;~~

Cleaning sidewalks.

(12) To provide for keeping sidewalks clean and free from obstructions and accumulations, ~~to ; and they may provide for the assessment and collection of taxes on real estate, and for the sale and conveyance thereof, and to pay the expenses of keeping the sidewalk adjacent to such real estate clean and free from obstructions and accumulations as herein provided;~~

Planting and trimming of trees;

protection of birds.

(13) To provide for the planting and protection of shade or ornamental and useful trees upon the streets or boulevards, ~~and to assess the cost thereof to the extent of benefits upon the abutting property as a special assessment, and to provide for the protection of birds and animals and their nests; to provide for the trimming of trees located upon the streets and boulevards or when the branches of trees overhang the streets and boulevards same when in the judgment of the mayor and council such trimming is made necessary to properly light such street or boulevard or~~

to furnish proper police protection; and to assess the cost thereof upon the abutting property as a special assessment;

Naming and numbering streets and houses.

(14) To provide for, regulate, and require the numbering or renumbering of houses along public streets or avenues; to care for and control, and to name and rename streets, avenues, parks, and squares within the city;

Weeds.

(15) To require weeds and worthless vegetation growing upon any lot or piece of ground within the city to be cut and destroyed so as to abate any nuisance occasioned thereby; to prohibit and control the throwing, depositing, or accumulation of litter on any lot or piece of ground within the city and to require the removal thereof so as to abate any nuisance occasioned thereby, and if the owner fails to cut and destroy weeds and worthless vegetation or remove litter, or both, after notice as required by ordinance, to assess the cost thereof upon the lots or lands as a special assessment. The notice required to be given may be by publication in the official newspaper of the city and may be directed in general terms to the owners of lots and lands affected without naming such owners;

Animals running at large.

(16) To prohibit and regulate the running at large or the herding or driving of domestic animals, such as hogs, cattle, horses, sheep, goats, fowls, or animals of any kind or description within the corporate limits; and provide for the impounding of all animals running at large, herded, or driven contrary to such prohibition; and to provide for the forfeiture and sale of animals impounded; to pay the expense of taking up, caring for, and selling ~~the same~~ such impounded animals, including the cost of advertising and fees of officers;

Use of streets.

(17) To regulate the transportation of articles through the streets, to prevent injuries to the streets from overloaded vehicles, and to regulate the width of wagon tires; and tires of other vehicles;

Playing on streets and sidewalks.

(18) To prevent or regulate the rolling of hoops, playing of ball, flying of kites, the riding of bicycles or tricycles, or any other amusement or practice having a tendency to annoy persons passing in the streets or on the sidewalks; or to frighten teams or horses; to regulate the use of vehicles propelled by steam, gas, electricity, or other motive power, operated

on the streets of the city;

Combustibles and explosives.

(19) To regulate or prohibit the transportation and keeping of gunpowder, oils, and other combustible and explosive articles;

Public sale of chattels on streets.

(20) To regulate, license, or prohibit the sale of domestic animals; or of goods, wares, and merchandise at public auction on the streets, alleys, and highways, or any public ground within the city;

Signs and obstruction in streets.

(21) To regulate and prevent the use of streets, sidewalks, and public grounds for signs, posts, awnings, awning posts, scales, or other like purposes; to regulate and prohibit the exhibition or carrying or conveying of banners, placards, advertisements, or the distribution or posting of advertisements or handbills in the streets or public grounds; or upon the sidewalks; Disorderly conduct.

(22) To provide for the punishment of persons disturbing the peace and good order of the city by clamor and noise, by intoxication, drunkenness, fighting, or using obscene or profane language in the streets or other public places; or otherwise violating the public peace by indecent or disorderly conduct; or by lewd and lascivious behavior;

Vagrants and tramps.

(23) To provide for the punishment of vagrants, tramps, common street beggars, common prostitutes, habitual disturbers of the peace, pickpockets, gamblers, burglars, thieves, or persons who practice any game, trick, or device with intent to swindle, persons who abuse their families, and suspicious persons who can give no reasonable account of themselves; and to punish trespassers upon private property;

Disorderly houses, gambling, offenses against public morals.

(24) To prohibit, restrain, and suppress tippling shops, houses of prostitution, opium joints, gambling houses, prize fighting, dog fighting, cock fighting, and other disorderly houses and practices, all games and gambling and desecration of the Sabbath, commonly called Sunday, and all kinds of indecencies; to regulate and license or prohibit the keeping and use of billiard tables, ten pins or ball alleys, shooting galleries, and other similar places of amusement; and to prohibit and suppress, all lotteries and gift enterprises of all kinds under whatsoever name carried

on, except that nothing in this subdivision shall be construed to apply to bingo, lotteries, lotteries by the sale of pickle cards, or raffles conducted in accordance with the Nebraska Bingo Act, the Nebraska Pickle Card Lottery Act, the Nebraska Lottery and Raffle Act, or the Nebraska Small Lottery and Raffle Act;

Police regulation in general.

(25) To make and enforce all police regulations for the good government, general welfare, health, safety, and security of the city and the citizens thereof; in addition to the police powers expressly granted herein; and in the exercise of the police power, ~~they may to~~ pass all needful and proper ordinances; and ~~shall have power to~~ impose fines, forfeitures, penalties, and imprisonment at hard labor for the violation of any ordinance, and to provide for the recovery, collection, and enforcement thereof; and in default of payment to provide for confinement in the city or county prison, workhouse, or other place of confinement with or without hard labor as may be provided by ordinance;

Fast driving on streets.

(26) To prevent horseracing; and immoderate driving or riding on the street; and to compel persons to fasten their horses or other animals attached to vehicles while standing in the streets;

Libraries, art galleries, and museums.

(27) To establish and maintain public libraries, reading rooms, art galleries, and museums; and to provide the necessary grounds or buildings therefor; to purchase books, papers, maps, manuscripts, works of art, and objects of natural or of scientific curiosity, and instruction therefor; to receive donations and bequests of money or property for the same in trust or otherwise; and to pass necessary bylaws and regulations for the protection and government of the same;

Hospitals, workhouses, jails, firehouses, etc.;
garbage disposal.

(28) To erect, designate, establish, maintain, and regulate hospitals or workhouses, houses of correction, jails, station houses, fire engine houses, asphalt repair plant, and other necessary buildings; also plants for the removal and disposal of garbage, or to make contracts for the removal or disposal of garbage, or for both, except as hereinafter provided. Before any contract for the removal and disposal of garbage, or both, ~~is shall be~~ let, the city council shall make specifications therefor, bids shall be

advertised for as now provided by law, and the contract shall be let to the lowest and best bidder, who shall furnish bond to the city conditioned upon his or her carrying out the terms of the contract, the bond to be approved by the city council. Nothing in this act, and no contract or regulation made by the city council, shall be so construed as to prohibit any person, firm, or corporation engaged in any business in which garbage accumulates as a byproduct, from selling or otherwise disposing of his, her, or its garbage, or hauling the same such garbage through the streets and alleys under such uniform and reasonable regulations as the city council may by ordinance prescribe for the removal and hauling of garbage;

Market places.

(29) To erect and establish market houses and market places; and to provide for the erection of all other useful and necessary buildings for the use of the city; and for the protection and safety of all property owned by the city; and they may locate such market houses and market places, and buildings aforesaid; may be located on any street, alley, or public ground; or on land purchased for such purpose;

Cemeteries, registers of births and deaths.

(30) To prohibit the establishment of additional cemeteries within the limits of the city, to regulate the registration of births and deaths, to direct the keeping and returning of bills of mortality, and to impose penalties on physicians, sextons, and others for any default in the premises;

Plumbing, etc., inspection.

(31) To provide for the inspection of steam boilers, electric light appliances, pipefittings, and plumbings, to regulate their erection and construction, to appoint inspectors, and to declare their powers and duties, except as herein otherwise provided;

Fire limits and fire protection.

(32) To prescribe fire limits and regulate the erection of all buildings and other structures within the corporate limits; to provide for the removal of any buildings, or structures or additions thereto erected contrary to such regulations, to provide for the removal of dangerous buildings, and to provide that wooden buildings shall not be erected or placed or repaired in the fire limits; but such ordinance shall not be suspended or modified by resolution nor shall exceptions be made by ordinance or resolution in favor of any person, firm, or corporation; or concerning any particular lot or building; to direct that all and any

building within such fire limits, when the same shall have been damaged by fire, decay, or otherwise, to the extent of fifty percent of the value of a similar new building above the foundation, shall be torn down or removed; and to prescribe the manner of ascertaining such damages and to assess the cost of removal of any building erected or existing contrary to such regulations or provisions, against the lot or real estate upon which such building or structure is located or shall be erected, or to collect such costs from the owner of any such building or structure and enforce such collection by civil action in any court of competent jurisdiction;

Building regulations.

(33) To regulate the construction, use, and maintenance of party walls, to prescribe and regulate the thickness, strength, and manner of constructing stone, brick, wood, or other buildings, and the size and shape of brick and other material placed therein, to prescribe and regulate the construction and arrangement of fire escapes and the placing of iron and metallic shutters and doors therein and thereon, and to provide for the inspection of elevators and hoist-way openings to avoid accidents; to prescribe, regulate, and provide for the inspection of all plumbing, pipefitting, or sewer connections in all houses or buildings now or hereafter erected; to regulate the size, number, and manner of construction of halls, doors, stairways, seats, aisles, and passageways of theaters, tenement houses, audience rooms, and all buildings of a public character, whether now built or hereafter to be built, so that there may be convenient, safe, and speedy exit in case of fire; to prevent the dangerous construction and condition of chimneys, fireplaces, hearths, stoves, stovepipes, ovens, boilers, and heating appliances used in or about any building or a manufactory; and to cause the same to be removed or placed in safe condition where when they are considered dangerous; to regulate and prevent the carrying on of manufactures dangerous in causing and promoting fires; to prevent the deposit of ashes in unsafe places; and to cause such buildings and enclosures as may be in a dangerous state to be put in a safe condition; to prevent the disposing of and delivery or use in any building or other structure, of soft, shelly, or imperfectly burned brick or other unsuitable building material within the city limits; and provide for the inspection of the same; to provide for the abatement of dense volumes of smoke; to regulate the construction of areaways, stairways, and vaults; and to

regulate partition fences; to enforce proper heating and ventilation of buildings used for schools, workhouses, or shops of every class wherein in which labor is employed or large numbers of persons are liable to congregate;

Warehouses and street railways.

(34) To regulate levees, depots and depot grounds, and places for storing freight and goods; and to provide for and regulate the laying of tracks and the passage of steam; or other railways through the streets, alleys, and public grounds of the city;

Lighting railroad property.

(35) To require the lighting of any railway within the city, the cars of which are propelled by steam, and to fix and determine the number, size, and style of lamp posts, burners, lamps, and all other fixtures and apparatus necessary for such lighting; and the points of location for such lamp posts; and in case any company owning or operating such railways shall fail to comply with such requirements, the council may cause the same to be done and may assess the expense thereof against such company, and the same shall constitute a lien upon any real estate belonging to such company and lying within such city; and may be collected in the same manner as taxes for general purposes;

City publicity.

(36) To provide for necessary publicity; and to appropriate money for the purpose of advertising the resources and advantages of the city;

Offstreet parking.

(37) To erect, establish, and maintain offstreet parking areas on publicly owned property located beneath any elevated segment of the National System of Interstate and Defense Highways or portion thereof, or public property title to which is in the city on May 12, 1971, or property owned by the city and used in conjunction with and incidental to city-operated facilities, and to regulate parking thereon by time limitation devises or by lease; and

Public passenger transportation systems.

(38) To acquire, by the exercise of the power of eminent domain or otherwise, lease, purchase, construct, own, maintain, and operate, or contract for the operation of, public passenger transportation systems, excluding taxicabs and railroad systems, including all property and facilities required therefor, within and without the limits of the city, to redeem such property from prior encumbrance in order to protect or preserve the interest of the city therein, to

exercise all powers granted by the Constitution of Nebraska and laws of the State of Nebraska or exercised by or pursuant to a home rule charter adopted pursuant thereto, including but not limited to receiving and accepting from the government of the United States or any agency thereof, from the State of Nebraska or any subdivision thereof, and from any person or corporation; donations, devises, gifts, bequests, loans, or grants for or in aid of the acquisition, operation, and maintenance of such public passenger transportation systems; and to administer, hold, use, and apply the same for the purposes for which such donations, devises, gifts, bequests, loans, or grants may have been made, to negotiate with employees and enter into contracts of employment, to employ by contract or otherwise individuals singularly or collectively, to enter into agreements authorized under the Interlocal Cooperation Act, to contract with an operating and management company for the purpose of operating, servicing, and maintaining any public passenger transportation systems any city of the metropolitan class shall acquire under the provisions of this act, and to exercise such other and further powers as may be necessary, incident, or appropriate to the powers of such city.

Sec. 2. That section 66-1219, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

66-1219. The Department of Agriculture and any city or county, while making inspections of dispensers pursuant to section 89-189 in lieu of the Department of Agriculture, shall contract to collect samples of alcohol and alcohol-blended fuels when conducting inspections of dispensers under section 89-187 and deliver the samples to the testing facility designated by the Department of Revenue. The Department of Agriculture and any such city or county shall also determine through records or inspection the amount of fuel in inventory from which such samples were taken. The Department of Agriculture and any such city or county shall be reimbursed for reasonable expenses, including personal services, incurred in performing duties assigned under the Petroleum Products Act.

Sec. 3. That section 81-216.29, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-216.29. (1) It shall be unlawful for any person to misbrand any food or distribute, offer for sale, or sell any misbranded food.

(2) A food shall be deemed to be misbranded

if:

(a) It does not bear labeling clearly stating (i) the identity of the food in terms likely to be easily and accurately understood by the consumer, (ii) the net quantity of contents of the food in terms authorized under ~~sections 89-183 to 89-1,103~~ the Weights and Measures Act, and (iii) the name and address of the manufacturer, distributor, or seller of the food; or

(b) Its labeling is false or misleading in any manner.

Sec. 4. That section 81-216.30, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-216.30. (1) It shall be unlawful for any person to deceptively pack or package any food, or for any person to distribute, offer for sale, or sell any food that has been deceptively packed or packaged.

(2) A food shall be deemed to be deceptively packed or packaged if:

(a) Any substance has been added to, mixed with, or packed with the food so as to increase its bulk or weight, reduce its quality or strength, or make it appear to be better or of greater value than it actually is; or

(b) Any inferiority or damage to the food has been concealed in any manner.

(3) It shall be unlawful for any person to offer for sale in the same display case or refrigerated cabinet at any retail establishment any meat, fish, or poultry, including any meat, fish, or poultry product, containing binders, blenders, or extenders, together with the display of any natural food product in such manner that the purchaser may be misled or in any way deceived in the selection of such product. Notwithstanding any other provision of this subsection, the same display case or refrigerated cabinet may be used for both meat, fish, or poultry or the products made from such meat, fish, or poultry, and meat, fish, or poultry products containing binders, blenders, or extenders if (a) notice to purchasers is conspicuously posted on the display case or refrigerated cabinet that the case or cabinet contains both natural product and natural product with binders, blenders, or extenders added, and (b) the meat, fish, or poultry, or meat, fish, or poultry products containing binders, blenders, or extenders are correctly and conspicuously labeled with the term product containing binders, product containing blenders, or product containing extenders, or a comparable term, when applicable, in print of the same

size used to identify the product. Such label shall contain a detailed statement of the ingredients and nutritional value together with pricing information, in compliance with section 89-191.

Sec. 5. Sections 89-183 to 89-1,103 and sections 5, 10, 12 to 19, 26, 32, 33, and 35 of this act shall be known and may be cited as the Weights and Measures Act.

Sec. 6. That section 89-183, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

89-183. As used in sections 89-183 to 89-1,103, unless the context otherwise requires For purposes of the Weights and Measures Act:

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

(2) Certificate of Conformance shall mean a National Type Evaluation Program Certificate of Conformance issued by the National Institute of Standards and Technology 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 shall mean 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 shall also include 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 shall mean 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, shall mean conformance to all applicable requirements of the act;

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

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

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

(9) Net drained weight shall mean 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 shall include free liquid, containers, conveyances, bags, wrappers, packaging materials, labels, individual piece coverings, decorative accompaniments, prizes, and coupons;

(10) Net weight shall mean 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 shall include containers, conveyances, bags, wrappers, packaging materials, labels, individual piece coverings, decorative accompaniments, prizes, and coupons;

(11) Package shall mean any commodity put up or packaged in any container in advance of sale in units suitable for sale;

(12) Primary standards shall mean the physical standards of the state which serve as the legal reference from which all other standards are derived;

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

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

(15) Secondary standards shall mean 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;

(16) Tare weight shall mean 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;

(17) Weighing and measuring device shall mean

all instruments and devices of every kind used to determine the quantity of any commodity and shall include 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;

(18) Weighing and measuring establishment shall mean 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

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

(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 sections 89-183 to 89-1,103-

(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. 7. That section 89-184, Reissue Revised Statutes of Nebraska, 1943, be amended to read as

follows:

89-184. The system of weights and measures in customary units of measurement in use in the United States and the metric system of weights and measures units of measurement are jointly recognized, and either one or both of these systems shall be used in commerce within for all commercial purposes in the state. The definitions of basic units of weight and measure, measurement and the tables of weight and measure, and weights and measures measurement and equivalents as published by the National Bureau of Standards Institute of Standards and Technology are recognized and shall govern weighing and measuring equipment devices, standards, and transactions in the state.

Sec. 8. That section 89-185, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

89-185. Weights and measures 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 Bureau of Standards, shall be the state primary standards of weights and measures, measurement and shall be maintained in such calibration as prescribed by the National Bureau of Standards 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. 9. That section 89-186, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

89-186. The Department of Agriculture shall adopt, promulgate, and enforce rules and regulations setting forth specifications, tolerances, and other technical requirements for commercial weighing and measuring devices. Insofar as practicable, the department shall adopt the (1) The Legislature hereby adopts by reference the following:

(a) The standards of the National Conference on Weights and Measures published in National Bureau of Standards Institute of Standards and Technology Handbook 44, entitled Specifications, Tolerances, and Other Technical Requirements for Commercial Weighing and Measuring Devices as it exists on the effective date of this act. The rules and regulations adopted 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 on the effective date of this act. 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 on the effective date of this act. 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 on the effective date of this act.

(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. 10. (1) No person shall sell a commercial weighing and measuring device within the State of Nebraska unless a Certificate of Conformance has been issued for the device except when the device is exempted by subsection (6) of this section.

(2) No person shall use a commercial weighing and measuring device within the State of Nebraska unless a Certificate of Conformance has been issued for the device prior to use except when the device is exempted by subsection (3), (4), or (5) of this section.

(3) Commercial weighing and measuring devices in service in Nebraska prior to the effective date of this act which meet the specifications, tolerances, and other technical requirements of National Institute of Standards and Technology Handbook 44 shall be exempt from meeting the requirements for the Certificate of Conformance.

(4) Commercial weighing and measuring devices removed from service by the owner or on which the department has issued a removal order after the effective date of this act and returned to service at a

later date shall be modified to meet all specifications, tolerances, and other technical requirements of National Institute of Standards and Technology Handbook 44 adopted by the Legislature on the date of the return to service. Such commercial weighing and measuring devices shall not be required to have been issued a Certificate of Conformance.

(5) Commercial weighing and measuring devices in service prior to the effective date of this act which are modified or upgraded after such date shall meet all specifications, tolerances, and other technical requirements of National Institute of Standards and Technology Handbook 44 adopted by the Legislature on the date of the modification or upgrading. Such commercial weighing and measuring devices shall not be required to have been issued a Certificate of Conformance.

(6) Commercial weighing and measuring devices in service prior to the effective date of this act and sold after such date shall be modified by the seller, unless the buyer and seller agree by contract to exchange the modification responsibility, to meet all specifications, tolerances, and other technical requirements of National Institute of Standards and Technology Handbook 44 adopted by the Legislature on the date sold. Such commercial weighing and measuring devices shall not be required to have been issued a Certificate of Conformance.

Sec. 11. That section 89-187, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

89-187. The director shall:

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

(2) Enforce the provisions of sections 89-183 to 89-1,103 the Weights and Measures Act;

(3) ~~Promulgate reasonable~~ Adopt and promulgate reasonable rules and regulations for the enforcement of sections 89-183 to 89-1,103; including, but not limited to, the registration of weighing and measuring device repairpersons; pit-seat-installation requirements; ~~adeption~~ 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 of such additional standards as are not specifically provided for in sections 89-183 to 89-17103, and such additional reasonable regulations regarding: (a) The varieties or kinds of devices; (b) attachments the act;

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

(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 packaged commodity;

(5) Upon a verified an application filed with the department by the applicant, upon forms furnished by the director, grant exemptions, including specific exemptions for single-use commercial weighing and measuring devices, from the provisions of sections 89-183 to 89-17103 or any regulations promulgated pursuant thereto, when the act or the rules and regulations when the applicant on such application shall provide 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 sections 89-183 to 89-17103, all 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 used by public utilities and these 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. Any such exempt weighing and measuring device may be inspected or tested by the director upon request of the person owning such device 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 sections 89-183 to 89-1,103 the act;

(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 the director's 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 in his or her discretion, inspect and test weights and measures weighing and measuring devices kept, offered, or exposed for sale or sold;

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

(11) Test all weights and measures (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 the maintenance of which funds are appropriated by the Legislature, of the state;

(12) Register and test annually all (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 39-6,180, 60-329, and 60-331. 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;

~~(13)~~ (12) Approve for use, and may mark, such weights and measures as commercial weighing and measuring devices which the director finds to be correct and shall reject and mark as rejected such weights and measures as commercial weighing and measuring devices which the director finds to be incorrect not correct. Weights and measures Commercial weighing and measuring devices that have been rejected may be seized if not corrected 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 weights and measures commercial weighing and measuring devices which are found not to be correct and found to be incorrect that are not capable of being made correct;

~~(14)~~ (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 or sold in accordance with sections 89-183 to 89-1,103 or regulations promulgated pursuant thereto 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 such as are designated in the National Bureau of Standards Handbook 133, entitled Checking the Net Contents of Packaged Goods 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) Prescribe, by regulation, Adopt and promulgate rules and regulations prescribing the appropriate term or unit of weight or measure 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) 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 fees shall be delinquent after due on August 1 of each year and shall be delinquent after such date; and

(18) Require, on and after August 1, 1992, all persons who operate a weighing and measuring establishment to obtain a permit to operate such establishment pursuant to section 12 of this act and to pay to the department an application permit fee pursuant to section 13 of this act; and

~~(18)~~ (19) Require, on or before August 1 of each year, all persons who maintain or have in their possession for use in commerce any weighing or measuring device operate a weighing and measuring establishment to: (a) Register such each commercial weighing and measuring device with the department upon forms furnished by the director; (b) pay to the department a registration fee in the amounts designated in column A; (c) pay device inspection fees to the department in the amounts designated in column B:

Scales:	A	B	Total Fees
Up to 35 pounds capacity	3.00	4.00	7.00
Multiunit Scales	3.00	33.00	36.00
Over 35 to 600 pounds capacity	3.00	6.00	9.00
Over 600 to 4,000 pounds capacity	3.00	9.00	12.00
Over 4,000 to 20,000 pounds capacity	3.00	13.00	16.00
Over 20,000 to 50,000 pounds capacity	3.00	21.00	24.00
Over 50,000 to 75,000 pounds capacity	3.00	23.00	26.00
Over 75,000 to 150,000 pounds capacity	3.00	28.00	31.00
Over 150,000 to 400,000 pounds capacity	3.00	32.00	35.00
Length Measuring Devices	3.00	3.00	6.00
Pumps:			
Service Station Dispensers -- per hose	3.00	4.00	7.00
High-capacity service station dispensers over 20 gallons per minute -- per hose	3.00	10.00	13.00

Meters:

Vehicle tank meters	3.00	10.00	13.00
Loading rack meters	3.00	10.00	13.00
Liquid petroleum gas meters	3.00	18.00	21.00
Liquid fertilizer meters	3.00	21.00	24.00
Liquid feed meters	3.00	21.00	24.00;

and (d) pay a penalty, as may be required by the department, of up to twenty-five percent per month of the fees for each month any such fees shall be are delinquent. Penalties not to exceed one hundred percent of such fees. Such penalties paid shall be in addition to the fees due. The department's decision regarding whether or not penalties shall be imposed, or the amount thereof, penalties will be imposed shall be based upon the existence and extent of any mitigating circumstances that have resulted in the late payment of such fees.

Sec. 12. On and after August 1, 1992, a person shall not operate a weighing and measuring establishment in the State of Nebraska unless such person holds a valid permit from the department. If the permit holder has more than one location with commercial weighing and measuring devices, he or she shall have a permit for each location.

Sec. 13. 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 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, corporation, or other legal entity; the location and type of all commercial weighing and measuring devices; and the signature of the applicant. On and after August 1, 1992, 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 the annual device registration and inspection fees required in section 89-187.

Sec. 14. Before issuing a permit to operate a weighing and measuring establishment, the director shall receive a placed-in-service report from a repair person, who is registered with the department, or inspect each weighing and measuring device to determine whether the applicant qualifies to hold a permit

pursuant to subsection (1) of section 18 of this act except when the requirements of section 15 of this act have been met. A placed-in-service report shall be in the form prescribed by the department. A weighing and measuring establishment receiving a placed-in-service report for all of its weighing and measuring devices, passing inspection by the department, or meeting the requirements of section 15 of this act and otherwise found to qualify to hold a permit pursuant to subsection (1) of section 18 of this act shall be issued a permit. An applicant who does not receive a permit shall be notified in writing of the grounds for denial, and such applicant shall be afforded the opportunity of a hearing to present evidence that the establishment is qualified to hold a permit pursuant to subsection (1) of section 18 of this act and should be issued a permit. All such hearings shall be in compliance with the Administrative Procedure Act.

Sec. 15. An applicant for a permit with commercial weighing and measuring devices registered with the department shall not be required to obtain a placed-in-service report or have such devices pass a new inspection when (1) the director determines that a new inspection is not necessary and (2) the devices have been properly registered for the previous year and all fees have been paid by the applicant.

Sec. 16. (1) A weighing and measuring establishment which has a permanent location for commercial weighing and measuring devices shall have a valid permit posted in a conspicuous place at the establishment, and there shall not be a change in ownership or location without the permitholder obtaining a new permit. Any permit for such establishment shall lapse automatically upon a change of ownership or location.

(2) A weighing and measuring establishment which does not have a permanent location for commercial weighing and measuring devices shall have a copy of a valid permit posted on or about each device and shall not have a change in ownership or permanent mailing address without the permitholder obtaining a new permit. Any permit for such establishment shall lapse automatically upon a change of ownership or permanent mailing address.

(3) The holder of any weighing and measuring establishment permit shall notify the department in writing at least thirty days prior to any change in ownership, name, or address of such establishment. A permitholder shall notify the department in writing

before there is a change of the name or address of the person authorized to receive notices and orders of the department. When an establishment is to be permanently closed, the permitholder shall return the permit to the department within one week after the closing.

Sec. 17. Weighing and measuring devices used by governmental agencies shall be exempt from the requirements of sections 12 to 16 of this act.

Sec. 18. (1) The holder of a permit issued pursuant to the Weights and Measures Act shall comply with the act, the rules and regulations adopted and promulgated pursuant to the act, and any order of the director issued pursuant to the act. The permitholder shall not interfere with the department in the performance of its duties.

(2) A permitholder may be put on probation requiring such person to comply with the conditions set out in an order of probation issued by the director or be ordered to cease and desist pursuant to section 26 of this act after: (a) The director determines the permitholder has not complied with subsection (1) of this section; (b) the permitholder is given written notice to comply and written notice of the right to a hearing to show cause why the specified order should not be issued; and (c) the director finds that issuing the specified order is appropriate, based on the hearing record or the available information if the hearing is waived by the permitholder.

(3) A permit may be suspended after: (a) The director determines the permitholder has not complied with subsection (1) of this section; (b) the permitholder is given written notice to comply and written notice of the right to a hearing to show cause why the permit should not be suspended; and (c) the director finds that issuing an order suspending the permit is appropriate, based on the hearing record or the available information if the hearing is waived by the permitholder.

(4) A permit may be immediately suspended and the director may order the permitholder's establishment closed prior to hearing when: (a) The director determines an immediate danger to the public health, safety, or welfare exists in the permitholder's establishment; and (b) the permitholder receives written notice to comply and written notice of the right to a hearing to show cause why the suspension should not be sustained. Within fifteen days after the suspension, the permitholder may request in writing a date for a hearing and the director shall consider the interests of

the permitholder when the director establishes the date and time of the hearing, except that no hearing shall be held sooner than is reasonable under the circumstances. When a permitholder does not request a hearing date within such fifteen-day period, the director shall establish a hearing date and notify the permitholder of the date and time of such hearing.

(5) A permit may be revoked after: (a) The director determines the permitholder has committed serious, repeated, or multiple violations of any of the requirements of subsection (1) of this section; (b) the permitholder is given written notice to comply and written notice of the right to a hearing to show cause why the permit should not be revoked; and (c) the director finds that issuing an order revoking the permit is appropriate based on the hearing record or on the available information if the hearing is waived by the permitholder.

(6) Any establishment for which the permit has been suspended shall close and remain closed until the permit is reinstated. Any establishment for which the permit has been revoked shall close and remain closed until a new permit has been issued.

(7) The director may terminate proceedings to suspend or revoke a permit or subject a permitholder to an order of the director described in subsection (2) of this section at any time if the reasons for such proceedings no longer exist. A permit which has been suspended may be reinstated, a person with a revoked permit may be issued a new permit, or a permitholder may no longer be subject to such an order if the director determines that the conditions which prompted the suspension, revocation, or order of the director no longer exist.

(8) Proceedings to suspend or revoke a permit or subject a permitholder to an order of the director described in subsection (2) of this section shall not preclude the department from pursuing other civil or criminal actions.

Sec. 19. (1) Any notice or order provided for in the Weights and Measures Act shall be personally served on the permitholder or on the person authorized by the permitholder to receive notices and orders of the department or shall be sent by certified mail, return receipt requested, to the last-known address of the permitholder or the person authorized to receive such notices and orders. A copy of the notice and the order shall be filed in the records of the department.

(2) Any notice to comply provided for in the

act shall set forth the acts or omissions with which the permitholder is charged.

(3) A notice of the permitholder's right to a hearing provided for in the act shall set forth the time and place of the hearing except as provided in subsection (4) of section 18 of this act. A notice of the permitholder's right to such hearing shall include notice that a permitholder's right to a hearing may be waived pursuant to subsection (5) of this section. A notice of the permitholder's right to a hearing to show cause why the permit should not be revoked shall include notice to the permitholder that the permit may be revoked or suspended, that the permitholder may be subject to an order of the director described in subsection (2) of section 18 of this act, or that the permit may be suspended and the permitholder subject to such an order if the director determines such action is more appropriate. A notice of the permitholder's right to a hearing to show cause why the permit should not be suspended shall include notice to the permitholder that the permit may be suspended or that the permitholder may also be subject to an order of the director described in subsection (2) of section 18 of this act if the director determines such action is more appropriate.

(4) The hearings provided for in the act shall be conducted by the director at a time and place he or she designates. The director shall make a final finding based upon the complete hearing record and issue an order. If the director has suspended a permit pursuant to subsection (4) of section 18 of this act, the director shall sustain, modify, or rescind the order. All hearings shall be in accordance with the Administrative Procedure Act.

(5) A permitholder shall be deemed to waive the right to a hearing if such permitholder does not come to the hearing at the time and place set forth in the notice described in subsection (3) of this section without requesting the director at least two days before the designated time to change the time and place for the hearing, except that before an order of the director becomes final, the director may designate a different time and place for the hearing if the permitholder shows the director that the permitholder had a justifiable reason for not coming to the hearing and not timely requesting a change in the time and place for such hearing. If the permitholder waives the right to a hearing, the director shall make a final finding based upon the available information and issue an order. If the director has suspended a permit pursuant to

subsection (4) of section 18 of this act, the director shall sustain, modify, or rescind the order.

(6) Any person aggrieved by the finding of the director shall have ten days from the entry of the director's order to request a new hearing if such person can show that a mistake of fact has been made which affected the director's determination. Any order of the director shall become final upon the expiration of ten days after its entry if no request for a new hearing is made.

Sec. 20. That section 89-188, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

89-188. When necessary for the enforcement of sections 89-183 to 89-193 or regulations promulgated pursuant thereto, the Weights and Measures Act or the rules and regulations adopted pursuant to the act, the director is may:

(1) Authorized to enter 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) Empowered to issue Issue stop-use, hold, and removal orders with respect to any weights and measures commercially used; commercial weighing and measuring device and stop-sale, hold, and removal orders with respect to any packaged commodities or bulk commodities commodity kept, offered, or exposed for sale or sold; -

(3) Empowered to seize Seize, for use as evidence, without formal warrant, any incorrect or unapproved weight; measure; package; commercial weighing and measuring device which is not correct or is not approved by the department or commodity found to be used, retained, offered, or exposed kept for sale, or sold in violation of the provisions of sections 89-183 to 89-193 or regulations promulgated pursuant thereto. the act or the rules and regulations;

(4) Empowered to stop Stop any commercial vehicle from which commodities or things are kept for sale, sold, or offered or exposed for sale, 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 some a specified

place for inspection; -

(5) With respect to the enforcement of sections 89-183 to 89-1,103, the director is hereby vested with special police powers, and is authorized to arrest, Arrest, without formal warrant, any violator of sections 89-183 to 89-1,103 the act. For such purpose the director shall be vested with special police powers;

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

(7) 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;

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

(9) 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.

Sec. 21. That section 89-192, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

89-192. 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 the ability for cost comparison and accurate quantity information.

Sec. 22. That section 89-193, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

89-193. Whenever the quantity is determined by the seller, bulk sales in excess of twenty dollars for a commodity sold from bulk, except sales from bulk of less than twenty dollars and sales of motor vehicle fuel of less than one hundred dollars, shall be accompanied by a delivery ticket containing an invoice shall be prepared by the person physically in control of the quantity determination and shall contain the following information:

(1) The name and address of the vendor and purchaser buyer and seller involved in the transaction;

(2) The date delivered;

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

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

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

Sec. 23. That section 89-194, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

89-194. Except as otherwise provided in ~~sections 89-183 to 89-1,103 or by the Weights and Measures Act or the rules and regulations adopted and promulgated pursuant thereto to the act,~~ any package kept for the purpose of sale or offered or exposed for sale or sold 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. When items are combined to form a distinctive product, the quantity representation may be in terms of the total quantity of the combined product and a quantity representation need not be made for each item, except that if the label lists the ingredients they shall be in the order of their predominance by weight; 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. 24. That section 89-195, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

89-195. In addition to the declarations required by section 89-194, any package sold at retail 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 pound and the total selling price.

Sec. 25. That section 89-196, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

89-196. 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 the quantity as is required by law or regulation to appear on the package and the identity of the commodity offered for that price. Where if a dual declaration is required, only the declaration that sets forth the quantity in terms of the smaller unit of weight or measure measurement need appear in the advertisement.

Sec. 26. (1) Whenever the director has reason to believe that any person has violated any provision of the Weights and Measures Act or any rule or regulation adopted and promulgated pursuant to the act, an order may be entered requiring the person to appear before the director to show cause why an order should not be entered requiring such person to cease and desist from the violation charged. Such order shall set forth the alleged violation, fix the time and place of the hearing, and provide for notice of such hearing. Hearings shall be conducted as provided for in section 19 of this act. After a hearing, if the director finds such person to be in violation, he or she shall enter an order requiring the person to cease and desist from the specific act, practice, or omission.

(2) The director may apply to the county attorney of the county in which the violation occurred or the Attorney General's office to take appropriate action pursuant to sections 89-198 and 89-1,101 without first entering an order as set forth in subsection (1) of this section when there exists an endangerment to the public health, safety, or welfare.

Sec. 27. That section 89-197, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

89-197. It shall be unlawful for any person to:

(1) Use or have in possession for use in commerce any incorrect weight or measure weighing and measuring device which is not correct;

(2) Remove any tag, seal, or mark of a stop-use, stop-sale, hold, or removal order issued by the department from any weight or measure weighing and measuring device or commodity without specific written authorization from the proper authority department;

(3) Fail to report to the department when any tag, seal, or mark of a stop-use, stop-sale, hold, or removal order issued by the department has been removed from any weighing and measuring device or commodity without specific written authorization from the department if such person operates a weighing and

measuring establishment and knows or has reason to know the tag, seal, or mark has been removed;

(4) Hinder, obstruct, or refuse to assist the director or obstruct any weights and measures official in the performance of his or her duties; or

(4) (5) Maintain or have in his or her possession for use in commerce any weight or measure any commercial weighing and measuring device that has not been registered in accordance with the provisions of sections 89-183 to 89-1,103- the Weights and Measures Act;

(6) Sell or keep for sale less than the quantity he or she represents of a commodity;

(7) Take more than the quantity he or she represents of a commodity when, as buyer, he or she furnishes the weight or measure by means of which the amount of the commodity is determined;

(8) Operate any weighing and measuring establishment without a valid permit, while the permit is suspended, or after the permit has been revoked if a permit is required by the act;

(9) Determine a gross weight and tare weight to arrive at a net weight by the use in commerce of different weighing and measuring devices that in combination will not meet the absolute value of maintenance tolerance;

(10) Falsify in any manner, by any means, or by or through a representative a recorded representation or documentation from any weighing and measuring device or any representation or delivery ticket of a commodity bought or sold by weight, measure, or count;

(11) Use any commercial weighing and measuring device in a commercial application unless a Certificate of Conformance has been issued for such device unless exempt in section 10 of this act;

(12) Sell any weighing and measuring device for use in a commercial application unless a Certificate of Conformance has been issued for such devices unless exempt in section 10 of this act;

(13) Use, add to, or modify a commercial weighing and measuring device in any way which makes the device not correct unless such change has been authorized by the director as provided for in the act;

(14) Misrepresent the price of any commodity kept for sale or sold by weight, measure, or count or represent the price in any manner calculated or tending to mislead or in any way deceive a person;

(15) Misrepresent the quantity of any commodity kept for sale or sold or represent the

quantity in any manner calculated or tending to mislead or in any way deceive a person;

(16) Fail to pay all fees and penalties as prescribed by the act and the rules and regulations adopted and promulgated pursuant to the act;

(17) Refuse to keep and make available for examination by the department all books, papers, and other information necessary for the enforcement of the act; or

(18) Use commercial weighing and measuring devices not in accordance with rules and regulations adopted and promulgated by the director pursuant to subdivision (3)(d) of section 89-187.

Sec. 28. That section 89-198, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

89-198. 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 sections 89-183 to 89-1-103-

(1) In order to obtain compliance with the Weights and Measures Act, the director may apply for a restraining order, a temporary or permanent injunction, or a mandatory injunction against any person who has violated, is violating, or is threatening to violate the act or the rules and regulations adopted and promulgated pursuant to the act. The district court of the county where the violation has occurred, is occurring, or is about to occur shall have jurisdiction to grant such relief upon good cause shown. Relief may be granted notwithstanding the existence of any other remedy at law and shall be granted without bond.

(2) It shall be the duty of the county attorney of the county in which any violation of the act or the rules and regulations has occurred, is occurring, or is about to occur, when notified by the director of such violation or threatened violation, to pursue appropriate proceedings without delay pursuant to this section, section 89-1,101, or both. Before the director reports a violation, an opportunity shall be given to such person to present his or her views to the director except when there exists an endangerment to the public health, safety, or welfare.

Sec. 29. That section 89-199, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

89-199. Whenever there shall exist a weight or measure or weighing or measuring device weighing and measuring devices exist 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 weighing and measuring devices are commercial weighing and measuring devices.

Sec. 30. That section 89-1,100, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

89-1,100. The director shall collect registration, permit, laboratory, and inspection fees in accordance with section 89-187 test, and inspection fees, penalties, and all such fees collected shall be paid to the state treasury and by 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 credited 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 of Agriculture department to aid in defraying the expenses of administering sections 89-183 to 89-1,103 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, ~~; otherwise, it shall lapse into the General Fund.~~ Any money in the Weights and Measures Administrative Fund fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to ~~72-1269~~ 72-1276. The registration, permit, laboratory, and inspection fees test, and inspection fees, penalties, and money required to be reimbursed as provided for in sections 89-183 to 89-1,103 the act shall constitute a lien on the weights and measures weighing and measuring devices or standards required to be or standards registered or approved for use in this state until such fees, penalties, and reimbursements are paid. The ~~and the~~ director may sue ~~therefor~~ 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.

Sec. 31. That section 89-1,101, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

89-1,101. Any person who violates any provision of ~~sections 89-183 to 89-1,103~~ the Weights and Measures Act or any order of the department after such order has become final or upon termination of any review proceeding, when the order has been sustained by a court of law, shall be guilty of a Class III misdemeanor. Upon a subsequent conviction thereof, he or she shall be guilty of a Class I misdemeanor.

Sec. 32. All actual costs associated with seizing any weighing and measuring device or commodity which is in violation of the Weights and Measures Act or the rules and regulations adopted and promulgated pursuant to the act, issuing and enforcing any stop-use, hold, or removal order for commercial weighing and measuring devices, issuing and enforcing any stop-sale, hold, or removal order for commodities, and stopping commercial vehicles shall be incurred by the owner of such commodity or weighing and measuring device. The department shall not be liable for any actual or incidental costs incurred by any person due to such departmental actions or in enforcing the act. The department shall be reimbursed by the owner for the actual cost incurred by the department in seizing any weighing and measuring device or commodity, issuing and enforcing any stop-use, hold, or removal order for commercial weighing and measuring devices, issuing and enforcing any stop-sale, hold, or removal order for commodities, and stopping commercial vehicles.

Sec. 33. Every person who keeps, sells, or uses a commercial weighing and measuring device shall keep and make available for examination by the department for a period of three years at a minimum the following records:

(1) All invoices generated from a sale from bulk;

(2) Bills of lading, invoices, or other pertinent data relating to commodities bought or sold; and

(3) Any other information that would verify accurate quantity determinations by weight, measure, or count.

Sec. 34. That section 89-1,103, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

89-1,103. Sections 89-183 to 89-1,103 The Weights and Measures Act shall be so interpreted and construed as to effectuate their the general purpose to make uniform the law of those states which enact them have enacted corresponding provisions.

Sec. 35. There is hereby established a Division of Weights and Measures under the control of the department which shall be responsible for the enforcement of the Weights and Measures Act.

Sec. 36. That original sections 14-102, 66-1219, 81-216.29, 81-216.30, 89-183 to 89-188, 89-192 to 89-1,101, and 89-1,103, Reissue Revised Statutes of Nebraska, 1943, and also sections 15-213, 16-223, 17-553, 89-189, 89-190, 89-191, and 89-1,102, Reissue Revised Statutes of Nebraska, 1943, are repealed.