

THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**SENATE BILL**  
**No. 133**

Session of  
1989

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INTRODUCED BY BELL, JANUARY 23, 1989

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REFERRED TO STATE GOVERNMENT, JANUARY 23, 1989

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AN ACT

1 Amending the act of December 1, 1965 (P.L.988, No.368),  
2 entitled, as amended, "An act relating to weights and  
3 measures; regulating the use and sale, and providing for the  
4 inspection of weighing and measuring devices; regulating the  
5 sale and packaging of commodities; imposing duties and  
6 conferring powers upon the Attorney General and Department of  
7 Justice and certain local officials; and prescribing  
8 penalties," transferring the State Bureau of Standard Weights  
9 and Measures and its powers and duties from the Department of  
10 Agriculture to the Department of Community Affairs; and  
11 making related substantive and editorial changes.

12 The General Assembly of the Commonwealth of Pennsylvania  
13 hereby enacts as follows:

14 Section 1. The title and sections 2(4) and (5), 6, 7, 8, 9,  
15 10, 11, 12, 13, 14, 15, 16, 18, 19, 20 and 21 of the act of  
16 December 1, 1965 (P.L.988, No.368), known as the Weights and  
17 Measures Act of 1965, amended December 18, 1968 (P.L.1247,  
18 No.396), are amended to read:

19 AN ACT

20 Relating to weights and measures; regulating the use and sale,  
21 and providing for the inspection of weighing and measuring  
22 devices; regulating the sale and packaging of commodities;

1       imposing duties and conferring powers upon the [Attorney  
2       General] Secretary and Department of [Justice] Community  
3       Affairs and certain local officials; and prescribing  
4       penalties.

5       Section 2. Definitions.--When used in this act, the  
6       following words and phrases shall have the meanings ascribed to  
7       them in this section unless the context clearly indicates  
8       otherwise:

9       \* \* \*

10      (4) ["Attorney General." The Attorney General shall include  
11       counsel general, attorney general, deputy attorney general,  
12       assistant attorney general, special attorney general or an  
13       attorney at law, designated by the Attorney General]  
14       "Secretary." The Secretary of Community Affairs of the  
15       Commonwealth or as provided for in section 16 of this act.

16      (5) "Director." The Director of the Bureau of Standard  
17       Weights and Measures of the Department of [Internal Affairs]  
18       Community Affairs.

19       \* \* \*

20       Section 6. Director and Inspectors of Weights and  
21       Measures.--There shall be a director of weights and measures and  
22       inspectors of weights and measures and necessary technical and  
23       clerical personnel who shall be appointed by the [Attorney  
24       General] secretary and who shall collectively comprise the State  
25       Bureau of Standard Weights and Measures, of which the director  
26       shall be the chief. The [Attorney General] secretary shall be  
27       allowed such sums for salaries for the director, the inspectors  
28       and the necessary technical and clerical employes, for necessary  
29       equipment and supplies and for traveling and contingent  
30       expenses, as shall be appropriated by the General Assembly.

1       Section 7. General Powers and Duties of [Attorney General]  
2       Secretary.--The [Attorney General] secretary shall have the  
3       custody of the State standards of weight and measure and of the  
4       other standards and equipment provided for by this act and shall  
5       keep accurate records of the same. The [Attorney General]  
6       secretary shall enforce the provisions of this act. He shall  
7       have and keep a general supervision over the weights and  
8       measures offered for sale, sold or in use in the State.

9       Section 8. Specific Powers and Duties of [Attorney General]  
10      secretary; Regulations.--(a) The [Attorney General] secretary  
11      shall issue from time to time regulations for the enforcement  
12      and administration of this act, which regulations [upon being  
13      filed with the Department of State under the procedures  
14      established by the Administrative Agency Law, act of June 4,  
15      1945 (P.L.1388), and its amendments], when promulgated pursuant  
16      to the act of July 31, 1968 (P.L.769, No.240), referred to as  
17      the Commonwealth Documents Law, shall have the force and effect  
18      of law. These regulations may include:

19       (1) Standards of net weight, measure, count and standards of  
20       fill for any commodity in package form.

21       (2) Rules governing the technical and reporting procedures  
22       to be followed and the report and record forms and marks of  
23       approval and rejection to be used by inspectors of weights and  
24       measures in the discharge of their official duties.

25       (3) Exemptions from the sealing or marking requirements of  
26       section 14 of this act with respect to weights and measures of  
27       such character or size that such sealing or marking would be  
28       inappropriate, impracticable or damaging to the apparatus in  
29       question.

30       (b) These regulations shall include specifications,

1 tolerances and regulations for weights and measures of the  
2 character of those specified in section 10 of this act designed  
3 to eliminate from use without prejudice to apparatus that  
4 conforms as closely as practicable to the official standards  
5 those (i) that are not accurate; (ii) that are of such  
6 construction that they are faulty, that is, that are not  
7 reasonably permanent in their adjustment or will not repeat  
8 their indications correctly; or (iii) that facilitate the  
9 perpetration of fraud. The specifications, tolerances and  
10 regulations for commercial weighing and measuring devices,  
11 together with amendments thereto as recommended by the National  
12 Bureau of Standards and published in National Bureau of  
13 Standards Handbook 44, and supplements thereto, or in any  
14 publication revising or superseding Handbook 44, shall be the  
15 specifications, tolerances and regulations for commercial  
16 weighing and measuring devices of the Commonwealth of  
17 Pennsylvania except insofar as specifically modified, amended or  
18 rejected by a regulation issued by the [Attorney General]  
19 secretary. For the purposes of this act, apparatus shall be  
20 deemed to be "correct" when it conforms to all applicable  
21 requirements promulgated as specified in this section; other  
22 apparatus shall be deemed to be "incorrect."

23 (c) Regulations promulgated hereunder shall be effective  
24 [thirty days from the date of their filing with the Department  
25 of State during which period interested] in accordance with  
26 section 203 of the Commonwealth Documents Law. Interested  
27 parties may submit to the [Attorney General] secretary, in  
28 writing, any objections to the proposed regulations and the  
29 reasons supporting such objections. In addition, the [Attorney  
30 General] secretary shall hold a hearing upon the written request

1 of three or more interested parties made within [said thirty day  
2 period,] the notice period of the proposed regulations in which  
3 case the [Attorney General] secretary may, at his discretion,  
4 further postpone the effective date of the regulation.

5 Section 9. Testing and Inspecting of Standards.--The  
6 [Attorney General] secretary at least once every five years  
7 shall test the standards of weight and measure procured by any  
8 city or county for which a sealer of weights and measures has  
9 been appointed and shall approve the same when found to be  
10 correct; and he shall inspect such standards at least once every  
11 two years.

12 Section 10. General Testing and Inspecting.--When not  
13 otherwise provided by law, the [Attorney General] secretary  
14 shall have the powers to inspect and test to ascertain if they  
15 are correct all weights and measures kept, offered or exposed  
16 for sale. It shall be the duty of the [Attorney General]  
17 secretary within a twelve-month period, or less frequently if in  
18 accordance with a schedule issued by him and as much oftener as  
19 he may deem necessary, to inspect and test to ascertain if they  
20 are correct, all weights and measures commercially used (i) in  
21 determining the weight, measurement or count of commodities or  
22 things sold, offered or exposed for sale on the basis of weight,  
23 measure or of count; or (ii) in computing the basic charge or  
24 payment for services rendered on the basis of weight, measure or  
25 of count. With respect to single-service devices, that is,  
26 devices designed to be used commercially only once and to be  
27 then discarded, and with respect to devices uniformly mass-  
28 produced, as by means of a mold or die and not susceptible to  
29 individual adjustment, tests may be made on representative  
30 samples of such devices and the lots of which such samples are

1 representative shall be held to be correct or incorrect upon the  
2 basis of the results of the inspections and tests on such  
3 samples.

4       Section 11. Investigations.--The [Attorney General]  
5 secretary shall investigate complaints made to him concerning  
6 violations of the provisions of this act and shall upon his own  
7 initiative conduct such investigations as he deems appropriate  
8 and advisable, to develop information on prevailing procedures  
9 in commercial quantity determination and on possible violations  
10 of the provisions of this act, and to promote the general  
11 objective of accuracy in the determination and representation of  
12 quantity in commercial transactions.

13      Section 12. Inspection of Packages.--The [Attorney General]  
14 secretary shall, from time to time, weigh or measure and inspect  
15 packages or amounts of commodities kept, offered or exposed for  
16 sale, sold or in the process of delivery, to determine whether  
17 the same contain the amounts represented and whether they be  
18 kept, offered or exposed for sale or sold in accordance with  
19 law; and when such packages or amounts of commodities are found  
20 not to contain the amounts represented or are found to be kept,  
21 offered or exposed for sale in violation of law, the [Attorney  
22 General] secretary may order them off sale and may so mark or  
23 tag them as to show them to be illegal. In carrying out the  
24 provisions of this section, the [Attorney General] secretary,  
25 whenever possible, shall employ sampling procedures recommended  
26 by the National Bureau of Standards, under which the compliance  
27 of a given lot of packages will be determined on the basis of  
28 the result obtained on a sample selected from and representative  
29 of such lot. No person shall (i) sell or keep, offer or expose  
30 for sale in intrastate commerce any package or amount of

1 commodity that has been ordered off sale or marked or tagged as  
2 provided in this section, unless and until such package or  
3 amount of commodity has been brought into full compliance with  
4 all legal requirements; or (ii) dispose of any package or amount  
5 of commodity that has been ordered off sale or marked or tagged  
6 as provided in this section and that has not been brought into  
7 compliance with legal requirements in any manner except with the  
8 specific approval of the [Attorney General] secretary.

9       Section 13. Stop-Use, Stop-Removal and Removal Orders.--(a)  
10 The [Attorney General] secretary shall have the power to issue  
11 stop-use orders, stop-removal orders and removal orders with  
12 respect to weights and measures being, or susceptible of being,  
13 commercially used and to issue stop-removal orders and removal  
14 orders with respect to packages or amounts of commodities kept,  
15 offered or exposed for sale, sold or in the process of delivery,  
16 whenever in the course of his enforcement of the provisions of  
17 this act he deems it necessary or expedient to issue such  
18 orders.

19       (b) No person shall use, remove from the premises specified  
20 or fail to remove from the premises specified any weight,  
21 measure or package or amount of commodity contrary to the terms  
22 of a stop-use order, stop-removal order or removal order issued  
23 under the authority of this section.

24       (c) Whenever an aggrieved person shall appeal or seek to  
25 enjoin enforcement of any order issued by the [Attorney General]  
26 secretary pursuant to this section, such proceeding shall be  
27 brought in the court of common pleas of the judicial district in  
28 which the weight, measure or commodity was located at the time  
29 of the issuance of the [Attorney General] secretary's order.

30       Section 14. Disposition of Correct and Incorrect

1 Apparatus.--(a) The [Attorney General] secretary shall approve  
2 for use and seal or mark with appropriate devices such weights  
3 and measures as he finds upon inspection and test to be  
4 "correct" as defined in section 8 of this act and shall reject  
5 and mark or tag "rejected" such weights and measures as he finds  
6 upon inspection or test to be "incorrect" as defined in section  
7 8 of this act, but which in his best judgment are susceptible to  
8 satisfactory repair. Such sealing or marking shall not be  
9 required with respect to such weights and measures as may be  
10 exempted therefrom by a regulation of the [Attorney General]  
11 secretary issued under the authority of section 8 of this act.

12 (b) The [Attorney General] secretary shall condemn and may  
13 seize and may destroy weights and measures found to be incorrect  
14 that in his best judgment are not susceptible to satisfactory  
15 repair. Weights and measures that have been rejected may be  
16 confiscated and may be destroyed by the [Attorney General]  
17 secretary if not corrected as required by section 20 of this act  
18 or if used or disposed of contrary to the requirements of  
19 section 20 of this act.

20 Section 15. Police Powers; Right of Entry and Stoppage.--(a)  
21 With respect to the enforcement of this act and any other acts  
22 dealing with weights and measures that he is or may be empowered  
23 to enforce, the [Attorney General] secretary may seize for use  
24 as evidence without formal warrant, incorrect or unsealed  
25 weights and measures or amounts or packages of commodity found,  
26 prior to seizure, to be used, retained, offered or exposed for  
27 sale or sold in violation of law.

28 (b) In the performance of his official duties, the [Attorney  
29 General] secretary is authorized to enter and go into or upon,  
30 without formal warrant, any structure or premises and to stop

1 any person whatsoever and to require him to proceed with or  
2 without any vehicle of which he may be in charge to the nearest  
3 available testing apparatus tested and approved by the [Attorney  
4 General] secretary, a city or a county.

5 Section 16. Powers and Duties of Director and Inspector.--  
6 The powers and duties given to and imposed upon the [Attorney  
7 General] secretary by sections 9, 10, 11, 12, 13, 14, 15, 19 and  
8 37 of this act are hereby given to and imposed upon the director  
9 and inspectors also when acting under the instructions and at  
10 the direction of the [Attorney General] secretary.

11 Section 18. City and County Standards and Equipment.--(a)  
12 The mayor of each city and the board of county commissioners of  
13 each county for which a sealer has been appointed shall (i)  
14 procure at the expense of the city or county, as the case may  
15 be, such standards of weight and measure and such additional  
16 equipment to be used for the enforcement of the provisions of  
17 this act in such city or county as may be prescribed by the  
18 [Attorney General] secretary; (ii) provide a suitable office for  
19 the sealer; and (iii) make provisions for the necessary clerical  
20 services, supplies and transportation and for defraying  
21 contingent expenses incident to the official activities of the  
22 sealer in carrying out the provisions of this act.

23 (b) When the standards of weight and measure required by  
24 this section to be provided by a city or county shall have been  
25 examined and approved by the [Attorney General] secretary, they  
26 shall be the official standards for such city or county.

27 (c) It shall be the duty of the sealer to make or to arrange  
28 to have made, at least as frequently as once a year, comparisons  
29 between his field standards and appropriate standards of a  
30 higher order belonging to his city or county, as the case may

1 be, or to the State in order to maintain such field standards in  
2 accurate condition.

3       Section 19. Concurrent Jurisdiction.--In cities and counties  
4 for which sealers of weights and measures have been appointed as  
5 provided for by local regulations, the [Attorney General]  
6 secretary shall have concurrent authority to enforce the  
7 provisions of the act.

8       Section 20. Duty of Owners of Incorrect Apparatus.--(a)  
9 Weights and measures that have been rejected under the authority  
10 of the [Attorney General] secretary or of a sealer shall remain  
11 subject to the control of the rejecting authority until such  
12 time as suitable repair or disposition thereof has been made as  
13 required by this section.

14       (b) The owners of such rejected weights and measures shall  
15 cause the same to be made correct within thirty days, or such  
16 longer period as may be authorized by the rejecting authority,  
17 or in lieu of this may dispose of the same, but only in such  
18 manner as is specifically authorized by the rejecting authority.

19       (c) Weights and measures that have been rejected shall not  
20 again be used commercially until they have been officially  
21 reexamined and found to be correct or until specific written  
22 permission for such use is issued by the rejecting authority.

23       Section 21. Method of Sale of Commodities.--(a) General  
24 commodities in liquid form shall be sold only by liquid measure  
25 or by weight and, except as otherwise provided in this act,  
26 commodities not in liquid form shall be sold only by weight,  
27 measure of length or area or by count. Liquid commodities may be  
28 sold by weight and commodities not in liquid form may be sold by  
29 count only if such methods give accurate information as to the  
30 quantity of commodity sold.

1       (b) The provisions of this section shall not apply (i) to  
2 commodities when sold for immediate consumption on the premises  
3 where sold; (ii) to vegetables when sold by the head or bunch;  
4 (iii) to commodities in containers standardized by law of this  
5 State or by Federal law; (iv) to commodities in package form  
6 when there exists a general consumer usage to express the  
7 quantity in some other manner; (v) to concrete aggregates,  
8 concrete mixtures and loose solid materials such as earth, soil,  
9 gravel, crushed stone and the like when sold by cubic measure;  
10 or (vi) to unprocessed vegetable and animal fertilizer when sold  
11 by cubic measure.

12       (c) The [Attorney General] secretary may issue such  
13 reasonable regulations as are necessary to assure that amounts  
14 of commodity sold are determined in accordance with good  
15 commercial practice and are so determined and represented as to  
16 be accurate and informative to all parties at interest.

17       Section 2. Sections 22(a) and (b) and 34 of the act, amended  
18 June 23, 1970 (P.L.423, NO.141), are amended to read:

19       Section 22. Packages; Declarations of Quantity and Origin;  
20 Variations; Exemptions.--(a) Except as otherwise provided in  
21 this act, any commodity in package form introduced or delivered  
22 for introduction into or received in intrastate commerce kept  
23 for the purpose of sale or offered or exposed for sale in  
24 intrastate commerce shall bear on the outside of the package  
25 such definite, plain and conspicuous declarations of (1) the  
26 identity of the commodity in the package unless the same can  
27 easily be identified through the wrapper or container; (2) the  
28 net quantity of the contents in terms of weight, measure or  
29 count; and (3) in the case of any package kept, offered or  
30 exposed for sale or sold any place other than on the premises

1 where packed, the name and place of business address of the  
2 manufacturer, packer or distributor as may be prescribed by  
3 regulation issued by the [Attorney General] secretary: Provided,  
4 That, in connection with the declaration required under clause  
5 (2), neither the qualifying term "when packed" or any words of  
6 similar import nor any term qualifying a unit of weight, measure  
7 or count (for example "jumbo," "giant," "full," and the like)  
8 that tends to exaggerate the amount of commodity in a package  
9 shall be used.

10 (b) Under clause (2) of subsection (a) of this section, the  
11 [Attorney General] secretary shall, by regulation, establish (i)  
12 reasonable variations to be allowed which may include variations  
13 below the declared weight or measure caused by ordinary and  
14 customary exposure only after the commodity is introduced into  
15 intrastate commerce to conditions that normally occur in good  
16 distribution practice and that unavoidably result in decreased  
17 weight or measure; (ii) exemptions as to small packages; and  
18 (iii) exemptions as to commodities put up in variable weights or  
19 sizes for sale intact and either customarily not sold as  
20 individual units or customarily weighed or measured at time of  
21 sale to the consumer.

22 \* \* \*

23 Section 34. Hindering or Obstructing Officer; Penalties.--  
24 Any person who shall hinder or obstruct in any way the [Attorney  
25 General] secretary, the director or any one of the inspectors or  
26 a sealer or deputy sealer in the performance of his official  
27 duties shall upon conviction thereof, in a summary proceeding be  
28 punished by a fine of not less than twenty dollars (\$20) or more  
29 than two hundred dollars (\$200), or by imprisonment for not more  
30 than three months, or by both such fine and imprisonment.

1       Section 3. Sections 35 and 37 of the act, amended December  
2 18, 1968 (P.L.1247, No.396), are amended to read:

3       Section 35. Impersonation of Officer; Penalties.--Any person  
4 who shall impersonate in any way the [Attorney General]  
5 secretary, the director or any one of the inspectors or a sealer  
6 or deputy sealer by the use of his seal or a counterfeit of his  
7 seal or in any other manner shall be guilty of a misdemeanor,  
8 and upon conviction thereof, shall be punished by a fine of not  
9 less than one hundred dollars (\$100), or more than five hundred  
10 dollars (\$500), or by imprisonment for not more than one year,  
11 or by both such fine and imprisonment.

12      Section 37. Injunction.--The [Attorney General] secretary is  
13 authorized to apply to any court of competent jurisdiction for,  
14 and such court upon hearing and for cause shown may grant, a  
15 temporary or permanent injunction restraining any person from  
16 violating any provision of this act.

17      Section 4. (a) The State Bureau of Standard Weights and  
18 Measures, together with its functions, powers and duties,  
19 including, but not limited to, those functions, powers and  
20 duties set forth in the act to which this is an amendment and  
21 the acts listed in subsection (b) is transferred from the  
22 Department of Agriculture, where it had been a departmental  
23 bureau by virtue of Reorganization Plan No. 3 of 1973 (P.L.458),  
24 to the Department of Community Affairs, where it shall be a  
25 departmental bureau known as the State Bureau of Standard  
26 Weights and Measures, with all the powers, functions and duties  
27 it previously possessed.

28      (b) The functions, powers and duties of the Department of  
29 Justice, as set forth in or created by the following acts and  
30 transferred to the Department of Agriculture by Reorganization

1 Plan No. 3 of 1973, are transferred from the Department of  
2 Agriculture to the Department of Community Affairs:

3                 (1) The act of May 11, 1911 (P.L.275, No.177), entitled  
4                 "An act to provide for the appointment of county and city  
5                 inspectors of weights and measures; providing for their  
6                 compensation and expenses; prescribing their duties;  
7                 prohibiting vendors from giving false or insufficient  
8                 weights; and fixing the penalties for the violation of the  
9                 provisions hereof."

10                 (2) The act of May 5, 1921 (P.L.389, No.187), entitled  
11                 "An act to regulate and control the manufacture, sale,  
12                 offering for sale, giving away, and use of weights and  
13                 measures and of weighing and measuring devices in the  
14                 Commonwealth of Pennsylvania; providing for the approval and  
15                 disapproval of such weights, measures, and devices by the  
16                 Bureau of Standards; and prescribing penalties."

17                 (3) The act of July 19, 1935 (P.L.1356, No.427),  
18                 entitled, as amended, "An act to regulate the sale and  
19                 delivery of solid fuel, as herein defined; providing for  
20                 appointment of licensed weighmasters; prescribing their  
21                 powers and duties; authorizing substitute licensed  
22                 weighmasters; imposing certain duties on the Department of  
23                 Justice; and providing penalties."

24                 (4) The act of May 11, 1949 (P.L.1116, No.330),  
25                 entitled, as amended, "An act to regulate deliveries of light  
26                 fuel oil to domestic consumers; conferring powers and  
27                 imposing duties on the Department of Justice and the  
28                 inspectors of weights and measures of the several counties  
29                 and cities; and prescribing penalties."

30                 (5) The act of April 28, 1961 (P.L.135, No.64), known as

1       the "Public Weighmaster's Act."

2       (c) The functions, powers and duties of the Attorney General  
3       with respect to the State Bureau of Standard Weights and  
4       Measures, including the functions, powers and duties set forth  
5       in or created by the acts listed in subsection (b) and  
6       transferred to the Secretary of Agriculture by Reorganization  
7       Plan No. 3 of 1973, are transferred from the Secretary of  
8       Agriculture to the Secretary of Community Affairs.

9       (d) There are hereby transferred to the Department of  
10      Community Affairs, to be used, employed and expended in  
11      connection with the functions, powers and duties transferred by  
12      subsections (a), (b) and (c), the records, files, property,  
13      supplies and equipment now being used or held in connection with  
14      such functions, powers and duties; the personnel employed in  
15      connection with such functions, powers and duties; and the  
16      unexpended balances of appropriations, allocations, and other  
17      funds available or to be made available for use in connection  
18      with such functions, powers and duties.

19       (e) The acts listed in subsection (b) or any pertinent parts  
20      thereof are suspended insofar as they are in conflict with this  
21      act and insofar as they impose any powers, functions or duties  
22      on the Attorney General or on the Department of Justice.

23       (f) Reorganization Plan No. 3 of 1973 is hereby rescinded.

24       (g) The functions, powers and duties of the Secretary of  
25      Agriculture and the Bureau of Standard and Weights and Measures  
26      concerning weights and measures laboratory testing, as  
27      transferred to the Department of General Services by section  
28      1(a) of Reorganization Plan No. 1 of 1986 (P.L.1749), shall  
29      remain with the Department of General Services, as provided in  
30      that plan.

1       Section 5. This act shall take effect in 60 days.