

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2952 Session of
1992

INTRODUCED BY BISHOP, PESCI, TRELLO, HARPER, SALOOM, VEON, JAMES
AND OLIVER, SEPTEMBER 29, 1992

REFERRED TO COMMITTEE ON AGRICULTURE AND RURAL AFFAIRS,
SEPTEMBER 29, 1992

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," further providing for certain standards and
9 testing of certain commodities; and making editorial changes.

10 The General Assembly of the Commonwealth of Pennsylvania
11 hereby enacts as follows:

12 Section 1. The title of the act of December 1, 1965
13 (P.L.988, No.368), known as the Weights and Measures Act of
14 1965, amended December 18, 1968 (P.L.1247, No.396), is amended
15 to read:

16 AN ACT

17 Relating to weights and measures; regulating the use and sale,
18 and providing for the inspection of weighing and measuring
19 devices; regulating the sale and packaging of commodities;
20 imposing duties and conferring powers upon the [Attorney
21 General and Department of Justice] Department of Agriculture

1 and certain local officials; and prescribing penalties.

2 Section 2. Section 2(4) and (5) of the act, amended December
3 18, 1968 (P.L.1247, No.396), are amended and the section is
4 amended by adding a clause to read:

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 or as
14 provided for in section 16 of this act.]

15 (4.1) "Department." The Department of Agriculture of the
16 Commonwealth.

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

20 * * *

21 Section 3. Section 3 of the act, amended June 23, 1970
22 (P.L.423, No.141), is amended to read:

23 Section 3. Systems of Weights and Measures.--The system of
24 weights and measures in customary use in the United States and
25 the metric system of weights and measures are jointly recognized
26 and one or both of these systems shall be used for all
27 commercial purposes in the Commonwealth of Pennsylvania. The
28 definitions of basic units of weight and measure, the tables of
29 weight and measure and weights and measures equivalents as
30 published by the National [Bureau of Standards] Institute of

1 Standards and Technology are recognized and shall govern
2 weighing and measuring equipment and transactions in the State.

3 Section 4. Section 4 of the act is amended to read:

4 Section 4. State Standards of Weight and Measure.--Such
5 weights and measures in conformity with the standards of the
6 United States as have been supplied to the State by the Federal
7 government or otherwise obtained by the State for use as State
8 standards shall, when the same have been certified as being
9 satisfactory for use as such by the National [Bureau of
10 Standards] Institute of Standards and Technology be the State
11 standards of weight and measure. The State standards shall be
12 kept in a safe and suitable place in the office or laboratory of
13 the State Bureau of Standard Weights and Measures; shall not be
14 removed from the office or laboratory except for repairs or for
15 certification; and shall be submitted at least once in ten years
16 to the National [Bureau of Standards] Institute of Standards and
17 Technology for certification. The State standards shall be used
18 only in verifying the office standards and for scientific
19 purposes.

20 Section 5. Sections 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16,
21 18, 19, 20(a) and 21(c) of the act, amended December 18, 1968
22 (P.L.1247, No.396), are amended to read:

23 Section 6. Director and Inspectors of Weights and
24 Measures.--There shall be a director of weights and measures and
25 inspectors of weights and measures and necessary technical and
26 clerical personnel who shall be appointed by the [Attorney
27 General] department and who shall collectively comprise the
28 State Bureau of Standard Weights and Measures, of which the
29 director shall be the chief. The [Attorney General] department
30 shall be allowed such sums for salaries for the director, the

1 inspectors and the necessary technical and clerical employes,
2 for necessary equipment and supplies and for traveling and
3 contingent expenses, as shall be appropriated by the General
4 Assembly.

5 Section 7. General Powers and Duties of [Attorney General]
6 Department.--[The Attorney General] The State Metrology
7 Laboratory shall have the custody of the State standards of
8 weight and measure and of the other standards and equipment
9 provided for by this act and shall keep accurate records of the
10 same. The [Attorney General] department shall enforce the
11 provisions of this act[. He shall have] and keep a general
12 supervision over the weights and measures offered for sale, sold
13 or in use in the State.

14 Section 8. Specific Powers and Duties of [Attorney General]
15 Department; Regulations.--(a) The [Attorney General] department
16 shall issue from time to time regulations for the enforcement
17 and administration of this act, which regulations upon being
18 [filed with the Department of State under the procedures
19 established by the Administrative Agency Law, act of June 4,
20 1945 (P.L.1388), and its amendments,] promulgated pursuant to
21 the act of July 31, 1968 (P.L.769, No.240), referred to as the
22 Commonwealth Documents Law, shall have the force and effect of
23 law. These regulations may include:

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

26 (2) Rules governing the technical and reporting procedures
27 to be followed and the report and record forms and marks of
28 approval and rejection to be used by inspectors of weights and
29 measures in the discharge of their official duties.

30 (3) Exemptions from the sealing or marking requirements of

1 section 14 of this act with respect to weights and measures of
2 such character or size that such sealing or marking would be
3 inappropriate, impracticable or damaging to the apparatus in
4 question.

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

29 (c) Regulations [promulgated hereunder shall be effective
30 thirty days from the date of their filing with the Department of

1 State during which period interested parties may submit to the
2 Attorney General, in writing, any objections to the proposed
3 regulations and the reasons supporting such objections. In
4 addition, the Attorney General shall hold a hearing upon the
5 written request of three or more interested parties made within
6 said thirty day period, in which case the Attorney General may,
7 at his discretion, further postpone the effective date of the
8 regulation.] shall be promulgated in the manner provided in the
9 Commonwealth Documents Law.

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

17 Section 10. General Testing and Inspecting.--When not
18 otherwise provided by law, the [Attorney General] department
19 shall have the powers to inspect and test to ascertain if they
20 are correct all weights and measures kept, offered or exposed
21 for sale. It shall be the duty of the [Attorney General]
22 department within a twelve-month period, or less frequently if
23 in accordance with a schedule issued by him and as much oftener
24 as he may deem necessary, to inspect and test to ascertain if
25 they are correct, all weights and measures commercially used (i)
26 in determining the weight, measurement or count of commodities
27 or things sold, offered or exposed for sale on the basis of
28 weight, measure or of count; or (ii) in computing the basic
29 charge or payment for services rendered on the basis of weight,
30 measure or of count. With respect to single-service devices,

1 that is, devices designed to be used commercially only once and
2 to be then discarded, and with respect to devices uniformly
3 mass-produced, as by means of a mold or die and not susceptible
4 to individual adjustment, tests may be made on representative
5 samples of such devices and the lots of which such samples are
6 representative shall be held to be correct or incorrect upon the
7 basis of the results of the inspections and tests on such
8 samples.

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

18 Section 12. Inspection of Packages.--The [Attorney General]
19 department shall, from time to time, weigh or measure and
20 inspect packages or amounts of commodities kept, offered or
21 exposed for sale, sold or in the process of delivery, to
22 determine whether the same contain the amounts represented and
23 whether they be kept, offered or exposed for sale or sold in
24 accordance with law; and when such packages or amounts of
25 commodities are found not to contain the amounts represented or
26 are found to be kept, offered or exposed for sale in violation
27 of law, the [Attorney General] department may order them off
28 sale and may so mark or tag them as to show them to be illegal.
29 In carrying out the provisions of this section, the [Attorney
30 General, whenever possible, shall employ sampling procedures

1 recommended by the National Bureau of Standards, under which the
2 compliance of a given lot of packages will be determined on the
3 basis of the result obtained on a sample selected from and
4 representative of such lot.] department shall use the National
5 Institute of Standards and Technology Handbook 133, latest
6 edition, containing any amendments or supplements thereto, or
7 which may be superseded by a new handbook, except insofar as
8 specifically modified, amended or rejected by a regulation
9 issued by the department. No person shall (i) sell or keep,
10 offer or expose for sale in intrastate commerce any package or
11 amount of commodity that has been ordered off sale or marked or
12 tagged as provided in this section, unless and until such
13 package or amount of commodity has been brought into full
14 compliance with all legal requirements; or (ii) dispose of any
15 package or amount of commodity that has been ordered off sale or
16 marked or tagged as provided in this section and that has not
17 been brought into compliance with legal requirements in any
18 manner except with the specific approval of the [Attorney
19 General] department.

20 Section 13. Stop-Use, Stop-Removal and Removal Orders.--(a)
21 The [Attorney General] department shall have the power to issue
22 stop-use orders, stop-removal orders and removal orders with
23 respect to weights and measures being, or susceptible of being,
24 commercially used and to issue stop-removal orders and removal
25 orders with respect to packages or amounts of commodities kept,
26 offered or exposed for sale, sold or in the process of delivery,
27 whenever in the course of [his] the department's enforcement of
28 the provisions of this act [he] the department deems it
29 necessary or expedient to issue such orders.

30 (b) No person shall use, remove from the premises specified

1 or fail to remove from the premises specified any weight,
2 measure or package or amount of commodity contrary to the terms
3 of a stop-use order, stop-removal order or removal order issued
4 under the authority of this section.

5 (c) Whenever an aggrieved person shall appeal or seek to
6 enjoin enforcement of any order issued by the [Attorney General]
7 department pursuant to this section, such proceeding shall be
8 brought in the court of common pleas of the judicial district in
9 which the weight, measure or commodity was located at the time
10 of the issuance of the [Attorney General's] department's order.

11 Section 14. Disposition of Correct and Incorrect
12 Apparatus.--(a) The [Attorney General] department shall approve
13 for use and seal or mark with appropriate devices such weights
14 and measures as [he] it finds upon inspection and test to be
15 "correct" as defined in section 8 of this act and shall reject
16 and mark or tag "rejected" such weights and measures as [he] it
17 finds upon inspection or test to be "incorrect" as defined in
18 section 8 of this act, but which in [his] its best judgment are
19 susceptible to satisfactory repair. Such sealing or marking
20 shall not be required with respect to such weights and measures
21 as may be exempted therefrom by a regulation of the [Attorney
22 General] department issued under the authority of section 8 of
23 this act.

24 (b) The [Attorney General] department shall condemn and may
25 seize and may destroy weights and measures found to be incorrect
26 that in [his] its best judgment are not susceptible to
27 satisfactory repair. Weights and measures that have been
28 rejected may be confiscated and may be destroyed by the
29 [Attorney General] department if not corrected as required by
30 section 20 of this act or if used or disposed of contrary to the

1 requirements of section 20 of this act.

2 Section 15. Police Powers; Right of Entry and Stoppage.--(a)

3 With respect to the enforcement of this act and any other acts

4 dealing with weights and measures [that he is or may be

5 empowered to enforce, the Attorney General] the department may

6 seize for use as evidence without formal warrant, incorrect or

7 unsealed weights and measures or amounts or packages of

8 commodity found, prior to seizure, to be used, retained, offered

9 or exposed for sale or sold in violation of law.

10 (b) [In the performance of his official duties, the Attorney

11 General] The department is authorized to enter and go into or

12 upon, without formal warrant, any structure or premises and to

13 stop any person whatsoever and to require him to proceed with or

14 without any vehicle of which he may be in charge to the nearest

15 available testing apparatus tested and approved by the [Attorney

16 General] department, a city or a county.

17 (c) The department shall utilize the method of sale of

18 commodities as stated in the National Institute of Standards and

19 Technology Handbook 130, except insofar as specifically

20 modified, amended or rejected by a regulation issued by the

21 department.

22 Section 16. Powers and Duties of Director and Inspector.--

23 The powers and duties given to and imposed upon the [Attorney

24 General] department by sections 9, 10, 11, 12, 13, 14, 15, 19

25 and 37 of this act are hereby given to and imposed upon the

26 director and inspectors also when acting under the instructions

27 and at the direction of the [Attorney General] department.

28 Section 18. City and County Standards and Equipment.--(a)

29 The mayor of each city and the board of county commissioners of

30 each county for which a sealer has been appointed shall (i)

1 procure at the expense of the city or county, as the case may
2 be, such standards of weight and measure and such additional
3 equipment to be used for the enforcement of the provisions of
4 this act in such city or county as may be prescribed by the
5 [Attorney General] department; (ii) provide a suitable office
6 for the sealer; and (iii) make provisions for the necessary
7 clerical services, supplies and transportation and for defraying
8 contingent expenses incident to the official activities of the
9 sealer in carrying out the provisions of this act.

10 (b) When the standards of weight and measure required by
11 this section to be provided by a city or county shall have been
12 examined and approved by the [Attorney General] department, they
13 shall be the official standards for such city or county.

14 (c) It shall be the duty of the sealer to make or to arrange
15 to have made, at least as frequently as once a year, comparisons
16 between his field standards and appropriate standards of a
17 higher order belonging to his city or county, as the case may
18 be, or to the State in order to maintain such field standards in
19 accurate condition.

20 Section 19. Concurrent Jurisdiction.--In cities and counties
21 for which sealers of weights and measures have been appointed as
22 provided for by local regulations, the [Attorney General]
23 department shall have concurrent authority to enforce the
24 provisions of the act.

25 Section 20. Duty of Owners of Incorrect Apparatus.--(a)
26 Weights and measures that have been rejected under the authority
27 of the [Attorney General] department or of a sealer shall remain
28 subject to the control of the rejecting authority until such
29 time as suitable repair or disposition thereof has been made as
30 required by this section.

1 * * *

2 Section 21. Method of Sale of Commodities.--* * *

3 (c) The [Attorney General] department may issue such
4 reasonable regulations as are necessary to assure that amounts
5 of commodity sold are determined in accordance with good
6 commercial practice and are so determined and represented as to
7 be accurate and informative to all parties at interest. In
8 issuing these regulations, the department shall recognize the
9 method of sale of commodities as stated in the National
10 Institute of Standards and Technology Handbook 130, except as
11 otherwise modified, amended or rejected by regulation.

12 Section 6. Sections 22 and 34 of the act, amended June 23,
13 1970 (P.L.423, No.141), are amended to read:

14 Section 22. Packages; Declarations of Quantity and Origin;
15 Variations; Exemptions.--(a) Except as otherwise provided in
16 this act, any commodity in package form introduced or delivered
17 for introduction into or received in intrastate commerce kept
18 for the purpose of sale or offered or exposed for sale in
19 intrastate commerce shall bear on the outside of the package
20 such definite, plain and conspicuous declarations of (1) the
21 identity of the commodity in the package unless the same can
22 easily be identified through the wrapper or container; (2) the
23 net quantity of the contents in terms of weight, measure or
24 count; and (3) in the case of any package kept, offered or
25 exposed for sale or sold any place other than on the premises
26 where packed, the name and place of business address of the
27 manufacturer, packer or distributor as may be prescribed by
28 regulation issued by the [Attorney General] department:

29 Provided, That, in connection with the declaration required
30 under clause (2), neither the qualifying term "when packed" or

1 any words of similar import nor any term qualifying a unit of
2 weight, measure or count (for example "jumbo," "giant," "full,"
3 and the like) that tends to exaggerate the amount of commodity
4 in a package shall be used.

5 (b) Under clause (2) of subsection (a) of this section, the
6 [Attorney General] department shall, by regulation, establish

7 (i) reasonable variations to be allowed which may include
8 variations below the declared weight or measure caused by
9 ordinary and customary exposure only after the commodity is
10 introduced into intrastate commerce to conditions that normally
11 occur in good distribution practice and that unavoidably result
12 in decreased weight or measure; (ii) exemptions as to small
13 packages; and (iii) exemptions as to commodities put up in
14 variable weights or sizes for sale intact and either customarily
15 not sold as individual units or customarily weighed or measured
16 at time of sale to the consumer.

17 (c) All commodities not considered as commodities in package
18 form within the meaning of the act or labeled as to net contents
19 at the time of sale, shall be counted, measured or weighed in
20 full view of the purchaser at the time of sale on a weighing or
21 measuring device approved by the department and inspected as to
22 accuracy by the several State, county and city inspectors of
23 weights and measures; and a statement of result of such count,
24 measure or weight shall be made to the purchaser by the person
25 making the sale. All commodities not considered as commodities
26 in package form within the meaning of the act or labeled as to
27 net contents at the time of sale, and which shall be ordered by
28 telephone or in some manner wherein the purchaser is not present
29 at the time the commodities are weighed, measured or counted,
30 shall have marked plainly thereon by the seller or his agent,

1 the contents either by weight, measure or count, or a written
2 memorandum of the same shall be delivered with the commodity to
3 purchaser.

4 Section 34. Hindering or Obstructing Officer; Penalties.--

5 Any person who shall hinder or obstruct in any way the [Attorney
6 General] department, the director or any one of the inspectors
7 or a sealer or deputy sealer in the performance of his official
8 duties shall upon conviction thereof, in a summary proceeding be
9 punished by a fine of not less than twenty dollars (\$20) or more
10 than two hundred dollars (\$200), or by imprisonment for not more
11 than three months, or by both such fine and imprisonment.

12 Section 7. Sections 35 and 37 of the act, amended December
13 18, 1968 (P.L.1247, No.396), are amended to read:

14 Section 35. Impersonation of Officer; Penalties.--Any person
15 who shall impersonate in any way the [Attorney General]
16 department, the director or any one of the inspectors or a
17 sealer or deputy sealer by the use of his seal or a counterfeit
18 of his seal or in any other manner shall be guilty of a
19 misdemeanor, and upon conviction thereof, shall be punished by a
20 fine of not less than one hundred dollars (\$100), or more than
21 five hundred dollars (\$500), or by imprisonment for not more
22 than one year, or by both such fine and imprisonment.

23 Section 37. Injunction.--The [Attorney General] department
24 is authorized to apply to any court of competent jurisdiction
25 for, and such court upon hearing and for cause shown may grant,
26 a temporary or permanent injunction restraining any person from
27 violating any provision of this act.

28 Section 8. This act shall take effect in 60 days.