

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 133 Session of
1989

INTRODUCED BY BELL, JANUARY 23, 1989

REFERRED TO STATE GOVERNMENT, JANUARY 23, 1989

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:

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.