

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 105 Session of
2003

INTRODUCED BY LOGAN, ORIE, LAVALLE, KITCHEN AND COSTA,
FEBRUARY 3, 2003

REFERRED TO CONSUMER PROTECTION AND PROFESSIONAL LICENSURE,
FEBRUARY 3, 2003

AN ACT

1 Amending Title 3 (Agriculture) of the Pennsylvania Consolidated
2 Statutes, further providing for general powers and duties
3 relating to weights and measures, for investigations, for
4 orders, for specific powers and duties, for local
5 administration, for concurrent jurisdiction, for division of
6 responsibilities, for enforcement and regulations, for
7 offenses and penalties, for injunctions and for disposition
8 of funds.

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

11 Section 1. Sections 4109, 4116, 4118(a) and (c), 4121(a),
12 4122(b), 4124, 4125, 4150(a), 4176, 4179, 4183, 4191(b), 4192
13 and 4193(a) and (b) of Title 3 of the Pennsylvania Consolidated
14 Statutes are amended to read:

15 § 4109. General powers and duties [of department].

16 (a) Standards and records.--The State Metrology Laboratory
17 shall have the custody of the State standards of weight and
18 measure and of the other standards and equipment provided for by
19 this chapter and shall keep accurate records of the same.

20 (b) Attorney General.--The [department] Attorney General

1 shall enforce the provisions of this subchapter [and].

2 (c) Department.--The department shall keep a general
3 supervision over the weights and measures offered for sale, sold
4 or in use in this Commonwealth.

5 § 4116. Investigations.

6 The department shall investigate complaints made to it
7 concerning violations of the provisions of this subchapter and
8 shall, upon its own initiative, conduct such investigations as
9 it deems appropriate and advisable to develop information on
10 prevailing procedures in commercial quantity determination and
11 on possible violations of the provisions of this subchapter and
12 to promote the general objective of accuracy in the
13 determination and representation of quantity in commercial
14 transactions. The department shall notify the Attorney General
15 of the results of complaint investigations.

16 § 4118. Stop-use, stop-removal and removal orders.

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

27 * * *

28 (c) Appeal.--Whenever an aggrieved person shall appeal or
29 seek to enjoin enforcement of any order issued by the
30 [department] Attorney General pursuant to this section, such

1 proceeding shall be brought in the court of common pleas of the
2 judicial district in which the weight, measure or commodity was
3 located at the time of the issuance of the [department's] order.

4 § 4121. Powers and duties of director and inspector.

5 (a) Powers and duties.--The powers and duties given to and
6 imposed upon the department by sections 4111 (relating to
7 testing and inspections of standards), 4112 (relating to general
8 testing and inspections), 4115 (relating to training program),
9 4116 (relating to investigations), 4117 (relating to inspection
10 of packages), [4118 (relating to stop-use, stop-removal and
11 removal orders),] 4119 (relating to disposition of correct and
12 incorrect apparatus)[,] and 4120 (relating to police powers;
13 right of entry and stoppage)[, 4124 (relating to concurrent
14 jurisdiction) and 4192 (relating to temporary or permanent
15 injunctions)] are hereby given to and imposed upon the director
16 and inspector also when acting under the instructions and at the
17 direction of the department.

18 * * *

19 § 4122. City and county sealers and deputy sealers of weights
20 and measures; appointment, powers and duties.

21 * * *

22 (b) Powers and duties.--The sealer of a city or of a county
23 and his deputy sealers, when acting under his instructions and
24 at his direction, shall, but only to the extent delegated by the
25 department pursuant to section [4121] 4121(b) (relating to
26 powers and duties of director and inspector) and memorialized in
27 a memorandum of understanding executed pursuant to section 4125
28 (relating to division of responsibilities), have the same powers
29 and shall perform the same duties within the city or the county
30 for which appointed as are granted to and imposed upon the

1 director by sections 4112 (relating to general testing and
2 inspections), 4116 (relating to investigations), 4117 (relating
3 to inspection of packages), 4118 (relating to stop-use, stop-
4 removal and removal orders), 4119 (relating to disposition of
5 correct and incorrect apparatus), 4120 (relating to police
6 powers; right of entry and stoppage) and 4192 (relating to
7 temporary or permanent injunctions).

8 § 4124. Concurrent jurisdiction.

9 In cities and counties to which a delegation of powers and
10 duties has been effected pursuant to section 4121 (relating to
11 powers and duties of director and inspector), the [department]
12 Attorney General shall have concurrent authority to enforce the
13 provisions of this chapter.

14 § 4125. Division of responsibilities.

15 (a) Agreements; local inspection.--The Attorney General and
16 the department shall enter into memorandums of understanding
17 with counties and with cities to which a delegation of powers
18 and duties has been effected pursuant to section 4121 (relating
19 to powers and duties of director and inspector) for a division
20 of inspection responsibilities for the enforcement of this
21 chapter and any rules, regulations and standards promulgated
22 under this chapter, provided that such counties or cities
23 satisfy the standards and requirements established by the
24 [department] Attorney General to assure uniform Statewide
25 enforcement of this chapter. Each memorandum of understanding
26 shall be reviewed and updated annually and may be revoked in
27 whole or in part by the Attorney General and the department in
28 the event the Attorney General or the department determines that
29 the city or county sealer enforcement program does not satisfy
30 the standards and requirements established by the Attorney

1 General and the department as necessary to assure uniform
2 Statewide enforcement of this chapter. In reaching agreements to
3 enter into memorandums of understanding with counties and cities
4 employing sealers of weights and measures, the provisions of
5 this chapter and its regulations shall be considered as
6 establishing uniform requirements, regulations and standards for
7 weights and measures and weighing and measuring devices
8 throughout this Commonwealth.

9 (b) Reports.--Each city and county sealer shall annually and
10 at such other times as the Attorney General and the department
11 may require submit to the Attorney General and the department a
12 written report of the work performed by him, of the weights,
13 measures and weighing and measuring devices inspected or tested
14 by him and the results of such inspection or test, of all
15 prosecutions instituted by him for violations of the provisions
16 of this chapter and of all other matters and things pertaining
17 to his duties or which may be required by the department.

18 § 4150. Enforcement and regulations.

19 (a) General rule.--The [director] Attorney General is
20 authorized and directed to enforce the provisions of this
21 subchapter [and]. The director is authorized and directed to
22 adopt, with the approval of the department, such rules and
23 regulations as are deemed necessary to carry out the provisions
24 of this subchapter.

25 * * *

26 § 4176. Rules and regulations.

27 Rules and regulations for the carrying out [and enforcement]
28 of the provisions of this subchapter, not inconsistent with the
29 provisions thereof, shall be adopted by the department, which
30 rules and regulations shall include reasonable variations or

1 tolerances which may be allowed on weights and measures and
2 weighing and measuring devices included within the provisions of
3 this subchapter, and also specifications for such weights and
4 measures and weighing and measuring devices for the guidance of
5 manufacturers in the design and construction of such weights and
6 measures and weighing and measuring devices.

7 § 4179. Enforcement.

8 It shall be the duty of the bureau and the sealers of weights
9 and measures of the several counties and cities who shall find
10 satisfactory evidence of any violation of the provisions of this
11 subchapter to [cause] request the Attorney General to institute
12 appropriate proceedings [to be commenced and prosecuted, without
13 delay,] for the enforcement of the penalties as provided for in
14 this chapter.

15 § 4183. Enforcement of chapter[, rules and regulations].

16 [(a) Duties.--]It shall be the duty of the [department and
17 the sealers of weights and measures] Attorney General and the
18 district attorneys of the several counties and cities to enforce
19 the provisions of this subchapter.

20 [(b) Regulations.--The department shall have power to adopt
21 and promulgate such rules and regulations not inconsistent with
22 the provisions of this subchapter as may be deemed necessary to
23 carry into effect the intent and purpose of this subchapter.]

24 § 4191. Offenses and penalties.

25 * * *

26 (b) Civil penalties.--In addition to proceeding under any
27 other remedy available at law or in equity for a violation of a
28 provision of this chapter or a rule or regulation adopted or any
29 order issued under this chapter, the [department] Attorney
30 General may assess a civil penalty not to exceed \$10,000 upon an

1 individual or business for each offense. No civil penalty shall
2 be assessed unless the person charged has been given notice and
3 opportunity for a hearing in accordance with law. In determining
4 the amount of the civil penalty, the [department] Attorney
5 General shall consider the gravity of the violation. Whenever
6 the [department] Attorney General finds a violation which did
7 not cause harm to the public interest, the [department] Attorney
8 General may issue a warning in lieu of assessing a penalty. [In
9 case of inability to collect the civil penalty or failure of any
10 person to pay all or any portion of the penalty as the
11 department may determine, the department may refer the matter to
12 the Attorney General, who shall recover the amount by action in
13 the appropriate court.]

14 * * *

15 § 4192. Temporary or permanent injunctions.

16 In addition to any other remedies provided in this chapter,
17 the [department] Attorney General may apply to the Commonwealth
18 Court or to any other court having jurisdiction for a temporary
19 or permanent injunction restraining a person from violating any
20 provision of this chapter or any regulation adopted under this
21 chapter, regardless of whether there exists an adequate remedy
22 at law.

23 § 4193. Disposition of funds.

24 (a) Deposit in State Treasury.--When the proceeding is
25 instituted by the [department] Attorney General, moneys received
26 from fines and civil penalties shall be paid into the State
27 Treasury [and]. Half of the moneys shall be credited to the
28 general government appropriations of the [Department of
29 Agriculture] department for administering the provisions of this
30 chapter, and half of the moneys shall be credited to the General

1 Fund.

2 (b) Local share.--Notwithstanding subsection (a), if the
3 proceeding is instituted by a city or county which has entered
4 into a memorandum of understanding with the Attorney General and
5 the department to enforce the provisions of this chapter, moneys
6 received from fines and civil penalties shall be paid to the
7 city or county.

8 * * *

9 Section 2. This act shall take effect in 60 days.