

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 83rd General Assembly
3 Regular Session, 2001
4

As Engrossed: S2/1/01 S2/6/01 H2/20/01

A Bill

SENATE BILL 331

5 By: Senator Wooldridge
6 By: Representatives Wood, *Milum*
7

For An Act To Be Entitled

9 AN ACT TO ADOPT THE UNI FORM WEIG HTS AND MEASURES LAW
10 PROMULGATED BY THE NATIONAL CONFERENCE ON WEIG HTS AND
11 MEASURES; AND FOR OTHER PURPOSES.
12
13

Subtitle

14 AN ACT TO ADOPT THE UNI FORM WEIG HTS AND
15 MEASURES LAW PROMULGATED BY THE NATIONAL
16 CONFERENCE ON WEIG HTS AND MEASURES.
17
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20

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
22

23 SECTION 1. Defi ni ti ons.

24 For purposes of this act:

25 (1) "Board" means the State Plant Board;

26 (2) "Commercial weighing and measuring equipment" means weights and
27 measures and weighing and measuring devices commercially used or employed in
28 establishing the size, quantity, extent, area, or measurement of quantities,
29 things, produce, or articles for distribution or consumption, purchased,
30 offered, or submitted for sale, hire, or award, or in computing any basic
31 charge or payment for services rendered on the basis of weight or measure;
32 "Commodity" means an article or raw material that can be bought and sold;

33 (4) "Correct" as used in connection with weights and measures means
34 conformance to all applicable requirements of this act;

35 (5) "Director" means the Director of the State Plant Board;

36 (6) "Net mass" or "Net weight" means the weight of a commodity

1 excluding any materials, substances, or items not considered to be part of the
2 commodity. Materials, substances, or items not considered to be part of the
3 commodity include, but are not limited to, containers, conveyances, bags,
4 wrappers, packaging materials, labels, individual piece coverings, decorative
5 accompaniments, and coupons, except that, depending on the type of service
6 rendered, packaging materials may be considered to be part of the service.

7 For example, the service of shipping includes the weight of packing materials;

8 (7)(A) "Package", except as modified by Section 1 of the Application of
9 the Uniform Packaging and Labeling Regulation, whether standard package or
10 random package, means any commodity:

11 (i) Enclosed in a container or wrapped in any manner in
12 advance of wholesale or retail sale; or

13 (ii) Whose weight or measure has been determined in advance
14 of wholesale or retail sale;

15 (B) An individual item or lot of any commodity on which there is
16 marked a selling price based on an established price per unit of weight or of
17 measure, shall be considered a package;

18 (8) "Person" means both plural and the singular, as the case demands,
19 and includes individuals, partnerships, corporations, companies, societies,
20 and associations;

21 (9) "Primary standards" means the physical standards of the state that
22 serve as the legal reference from which all other standards for weights and
23 measures are derived;

24 (10) "Random weight package" means a package that is one of a lot,
25 shipment, or delivery of packages of the same commodity with no fixed pattern
26 of weights;

27 (11) "Sale from bulk" means the sale of commodities when the quantity
28 is determined at the time of sale;

29 (12) "Secondary standards" means the physical standards that are
30 traceable to the primary standards through comparisons, using acceptable
31 laboratory procedures, and used in the enforcement of weights and measures
32 laws and regulations;

33 (13) "Standard package" means a package that is one of a lot, shipment,
34 or delivery of packages of the same commodity with identical net contents
35 declarations; for example, one (1) liter bottles or twelve (12) fluid ounce
36 cans of carbonated soda; five hundred (500) gram or five (5) pound bags of

1 sugar; one hundred (100) meters or three-hundred foot (300') packages of rope;
2 (14) "Weight" as used in connection with any commodity or service means
3 net weight. When a commodity is sold by drained weight, the term means net
4 drained weight; and

5 (15) "Weights" and "measures" means all weights and measures of every
6 kind, instruments and devices for weighing and measuring, and any appliance
7 and accessories associated with any or all such instruments and devices.

8
9 SECTION 2. Systems of weights and measures.

10 The International System of Units (SI) and the system of weights and
11 measures in customary use in the United States are jointly recognized, and
12 either one or both of these systems shall be used for all commercial purposes
13 in the state. The definitions of basic units of weight and measure, the
14 tables of weight and measure, and weights and measures equivalents as
15 published by the National Institute of Standards and Technology are recognized
16 and shall govern weighing and measuring equipment and transactions in the
17 state.

18
19 SECTION 3. Physical standards.

20 Weights and measures that are traceable to the U.S. prototype standards
21 supplied by the Federal Government, or approved as being satisfactory by the
22 National Institute of Standards and Technology, shall be the state primary
23 standards of weights and measures, and shall be maintained in such calibration
24 as prescribed by the National Institute of Standards and Technology. All
25 secondary standards may be prescribed by the board and shall be verified upon
26 their initial receipt, and as often thereafter as deemed necessary by the
27 board.

28
29 SECTION 4. Technical requirements for weighing and measuring devices.

30 The specifications, tolerances, and other technical requirements for
31 commercial, law enforcement, data gathering, and other weighing and measuring
32 devices as adopted by the National Conference on Weights and Measures,
33 published in the National Institute of Standards and Technology Handbook 44,
34 "Specifications, Tolerances, and Other Technical Requirements for Weighing and
35 Measuring Devices," and supplements thereto or revisions thereof, shall apply
36 to weighing and measuring devices in the state, as adopted, or amended and

1 adopted, by rule of the board.

2
3 SECTION 5. Requirements for Packaging and Labeling.

4 The Uniform Packaging and Labeling Regulation as adopted by the National
5 Conference on Weights and Measures and published in the National Institute of
6 Standards and Technology Handbook 130, "Uniform Laws and Regulations," and
7 supplements thereto or revisions thereof, shall apply to packaging and
8 labeling in the state, as adopted, or amended and adopted, by rule of the
9 board.

10
11 SECTION 6. Requirements for the method of sale of commodities.

12 The Uniform Regulation for the Method of Sale of Commodities as adopted
13 by the National Conference on Weights and Measures and published in National
14 Institute of Standards and Technology Handbook 130, "Uniform Laws and
15 Regulations," and supplements thereto or revisions thereof, shall apply to the
16 method of sale of commodities in the state, as adopted, or amended and
17 adopted, by rule of the board.

18
19 SECTION 7. Requirements for unit pricing.

20 The Uniform Unit Pricing Regulation as adopted by the National
21 Conference on Weights and Measures and published in the National Institute of
22 Standards and Technology Handbook 130, "Uniform Laws and Regulations," and
23 supplements thereto or revisions thereof, shall apply to unit pricing in the
24 state, as adopted, or amended and adopted, by rule of the board.

25
26 SECTION 8. Requirements for the registration of servicepersons and
27 service agencies for commercial weighing and measuring devices.

28 The Uniform Regulation for the Voluntary Registration of Service Persons
29 and Service Agencies for Commercial Weighing and Measuring Devices as adopted
30 by the National Conference on Weights and Measures and published in the
31 National Institute of Standards and Technology Handbook 130, "Uniform Laws and
32 Regulations," and supplements thereto or revisions thereof, shall apply to the
33 registration of servicepersons and service agencies in the state, as adopted,
34 or amended and adopted, by rule of the board.

35
36 SECTION 9. Requirements for open dating.

1 The Uni form Open Dating Regulation as adopted by the National Conference
2 on Weights and Measures and published in the National Institute of Standards
3 and Technology Handbook 130, "Uni form Laws and Regulations," and supplements
4 thereto or revisions thereof, shall apply to open dating in the state, as
5 adopted, or amended and adopted, by rule of the board.

6
7 SECTION 10. Requirements for type evaluation.

8 The Uni form Regulation for National Type Evaluation as adopted by the
9 National Conference on Weights and Measures and published in National
10 Institute of Standards and Technology Handbook 130, "Uni form Laws and
11 Regulations," and supplements thereto or revisions thereof, shall apply to
12 type evaluation in the state, as adopted, or amended and adopted, by rule of
13 the board.

14
15 SECTION 11. State Weights and Measures Division.

16 There is hereby created a State Division of Weights and Measures located
17 for administrative purposes within the Arkansas Bureau of Standards of the
18 State Plant Board. The division is charged with, but not limited to,
19 performing the following functions on behalf of the citizens of the state:

20 (1) Assuring that weights and measures in commercial services within
21 the state are suitable for their intended use, properly installed, and
22 accurate, and are so maintained by their owner or user;

23 (2) Preventing unfair or deceptive dealing by weight or measure in any
24 commodity or service advertised, packaged, sold, or purchased within the
25 state;

26 (3) Making available to all users of physical standards or weighing and
27 measuring equipment the precision calibration and related meteorological
28 certification capabilities of the weights and measures facilities of the
29 division;

30 (4) Promoting uniformity, to the extent practicable and desirable,
31 between weights and measures requirements of this state and those of other
32 states and federal agencies; and

33 (5) Encouraging desirable economic growth while protecting the consumer
34 through the adoption by rule of weights and measures requirements as necessary
35 to assure equity among buyers and sellers.

36

1 SECTION 12. Powers and duties of the board.

2 The board shall:

3 (a) Maintain traceability of the state standards to the national
4 standards in the possession of the National Institute of Standards and
5 Technology;

6 (b) Enforce the provisions of this act;

7 (c) Issue reasonable regulations for the enforcement of this act, which
8 regulations shall have the force and effect of law;

9 (d) Establish labeling requirements, establish requirements for the
10 presentation of cost-per-unit information, establish standards of weight,
11 measure, or count, and reasonable standards of fill for any packaged
12 commodity; and may establish requirements for open dating information;

13 (e) Grant any exemptions from the provisions of this act or any
14 regulations promulgated pursuant thereto when appropriate to the maintenance
15 of good commercial practices within the state;

16 (f) Conduct investigations to ensure compliance with this act;

17 (g) Delegate to appropriate personnel any of these responsibilities for
18 the proper administration of this office;

19 (h) Test annually the standards for weights and measures used by any
20 city or county within the state, and approve the same when found to be
21 correct;

22 (i) Have the authority to inspect and test commercial weights and
23 measures kept, offered, or exposed for sale;

24 (j) Inspect and test, to ascertain if they are correct, weights and
25 measures commercially used:

26 (1) In determining the weight, measure, or count of commodities
27 or things sold, or offered or exposed for sale, on the basis of weight,
28 measure, or count; or,

29 (2) In computing the basic charge or payment for services
30 rendered on the basis of weight, measure, or count;

31 (k) Test all weights and measures used in checking the receipt or
32 disbursement of supplies in every institution, for the maintenance of which
33 funds are appropriated by the Arkansas General Assembly;

34 (l) Approve for use, and may mark, such commercial weights and measures
35 as are found to be correct, and shall reject and order to be corrected,
36 replaced, or removed such commercial weights and measures as are found to be

1 incorrect. Weights and measures that have been rejected may be seized if not
2 corrected within the time specified or if used or disposed of in a manner not
3 specifically authorized. The board shall remove from service and may seize
4 the weights and measures found to be incorrect that are not capable of being
5 made correct;

6 (m) Weigh, measure, or inspect packaged commodities kept, offered, or
7 exposed for sale, sold, or in the process of delivery, to determine whether
8 they contain the amounts represented and whether they are kept, offered, or
9 exposed for sale in accordance with this act or regulations promulgated
10 pursuant thereto. In carrying out the provisions of this section, the board
11 shall employ recognized sampling procedures, such as are adopted by the
12 National Conference on Weights and Measures and are published in the National
13 Institute of Standards and Technology Handbook 133, "Checking the Net Contents
14 of Packaged Goods";

15 (n) Prescribe, by regulation, the appropriate term or unit of weight or
16 measure to be used, whenever the board determines that an existing practice of
17 declaring the quantity of a commodity or setting charges for a service by
18 weight, measure, numerical count, time, or combination thereof, does not
19 facilitate value comparisons by consumers, or offers an opportunity for
20 consumer confusion;

21 (o) Allow reasonable variations from the stated quantity of contents,
22 which shall include those caused by loss or gain of moisture during the course
23 of good distribution practice or by unavoidable deviations in good
24 manufacturing practice only after the commodity has entered intrastate
25 commerce;

26 (p) Provide for the training of weights and measures personnel, and may
27 also establish minimum training and performance requirements which shall then
28 be met by all weights and measures personnel, whether county, municipal, or
29 state. The director may adopt the training standards of the National
30 Conference on Weights and Measures' National Training Program;

31 (q) Verify advertised prices, price representations, and point-of-sale
32 systems, as deemed necessary, to determine:

33 (1) The accuracy of prices and computations and the correct use
34 of the equipment; and

35 (2) If such system utilizes scanning or coding means in lieu of
36 manual entry, the accuracy of prices printed or recalled from a database;

1 (r) In carrying out the provisions of this section, the board shall:

2 (1) Employ recognized procedures, such as are designated in
3 National Institute of Standards and Technology Handbook 130, Uniform Laws and
4 Regulations, "Examination Procedures for Price Verification";

5 (2) Issue necessary rules and regulations regarding the accuracy
6 of advertised prices and automated systems for retail price charging, referred
7 to as "point-of-sale systems", for the enforcement of this section, which
8 rules shall have the force and effect of law; and

9 (3) Conduct investigations to ensure compliance.

10
11 SECTION 13. Special police powers.

12 When necessary for the enforcement of this act or regulations
13 promulgated pursuant thereto, the board is:

14 (a) Authorized to enter any commercial premises during normal business
15 hours, except that in the event such premises are not open to the public, he
16 or she shall first present his or her credentials and obtain consent before
17 making entry thereto, unless a search warrant has previously been obtained;

18 (b) Empowered to issue stop-use, hold, and removal orders with respect
19 to any weights and measures commercially used, stop-sale, hold, and removal
20 orders with respect to any packaged commodities or bulk commodities kept,
21 offered, or exposed for sale;

22 (c) Empowered to seize, for use as evidence, without formal warrant,
23 any incorrect or unapproved weight, measure, package, or commodity found to be
24 used, retained, offered, or exposed for sale or sold in violation of the
25 provisions of this act or regulations promulgated pursuant thereto;

26 (d) Empowered to stop any commercial vehicle and, after presentation of
27 his credentials, inspect the contents, require that the person in charge of
28 that vehicle produce any documents in his possession concerning the contents,
29 and require him to proceed with the vehicle to some specified place for
30 inspection; and

31 (e) With respect to the enforcement of this act, the board is hereby
32 vested with special police powers, and is authorized to arrest, with warrant,
33 any violator of this act.

34
35 SECTION 14. Powers and duties of local officials.

36 Any weights and measures official appointed for a county or city shall

1 have the duties and powers enumerated in this act, excepting those duties
2 reserved to the state by law or regulation. These powers and duties shall
3 extend to their respective jurisdictions, except that the jurisdiction of a
4 county official shall not extend to any city for which a weights and measures
5 official has been appointed. No requirement set forth by local agencies may
6 be less stringent than or conflict with the requirements of the state.

7
8 SECTION 15. Misrepresentation of quantity.

9 No person shall:

10 (1) Sell, offer, or expose for sale a quantity less than the
11 quantity represented; nor

12 (2) Take more than the represented quantity when, as buyer, he or
13 she furnishes the weight or measure by means of which the quantity is
14 determined; nor

15 (3) Represent the quantity in any manner calculated or tending to
16 mislead or in any way deceive another person.

17
18 SECTION 16. Misrepresentation of pricing.

19 No person shall misrepresent the price of any commodity or service sold,
20 offered, exposed, or advertised for sale by weight, measure, or count, nor
21 represent the price in any manner calculated or tending to mislead or in any
22 way deceive a person.

23
24 SECTION 17. Method of sale.

25 (a) Except as otherwise provided by the board, or by firmly established
26 trade custom and practice:

27 (1) Commodities in liquid form shall be sold by liquid measure or
28 by weight; and

29 (2) Commodities not in liquid form shall be sold by weight, by
30 measure, or by count.

31 (b) The method of sale shall provide accurate and adequate quantity
32 information that permits the buyer to make price and quantity comparisons.

33
34 SECTION 18. Sale from bulk.

35 All bulk sales in which the buyer and seller are not both present to
36 witness the measurement, all bulk deliveries of heating fuel, and all other

1 bulk sales specified by rule or regulation of the board, shall be accompanied
2 by a delivery ticket containing the following information:

3 (1) The name and address of the buyer and seller;

4 (2) The date delivered;

5 (3) The quantity delivered and the quantity upon which the price is
6 based, if this differs from the delivered quantity, for example, when
7 temperature compensated sales are made;

8 (4) The unit price, unless otherwise agreed upon by both buyer and
9 seller;

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

13 (6) The count of individually wrapped packages, if more than one, in
14 the instance of commodities bought from bulk but delivered in packages.

15
16 SECTION 19. Information required on packages.

17 Except as otherwise provided in this act or by regulations promulgated
18 pursuant thereto, any package, whether a random package or a standard package,
19 kept for the purpose of sale, or offered or exposed for sale shall bear on the
20 outside of the package a definite, plain, and conspicuous declaration of:

21 (1) The identity of the commodity in the package, unless the same can
22 easily be identified through the wrapper or container;

23 (2) The quantity of contents in terms of weight, measure, or count; and

24 (3) The name and place of business of the manufacturer, packer, or
25 distributor, in the case of any package kept, offered, or exposed for sale, or
26 sold in any place other than on the premises where packed.

27
28 SECTION 20. Declarations of unit price on random weight packages.

29 In addition to the declarations required by section 19 of this act, any
30 package being one of a lot containing random weights of the same commodity, at
31 the time it is offered or exposed for sale at retail, shall bear on the
32 outside of the package a plain and conspicuous declaration of the price per
33 kilogram or pound and the total selling price of the package.

34
35 SECTION 21. Advertising packages for sale.

36 Whenever a packaged commodity is advertised in any manner with the

1 retail price stated, there shall be closely and conspicuously associated with
2 the retail price a declaration of quantity as is required by law or regulation
3 to appear on the package.

4
5 SECTION 22. Prohibited acts.

6 No person shall:

7 (1) Use or have in possession for use in commerce any incorrect weight
8 or measure;

9 (2) Sell or offer for sale for use in commerce any incorrect weight or
10 measure;

11 (3) Remove any tag, seal, or mark from any weight or measure without
12 specific written authorization from the proper authority;

13 (4) Hinder or obstruct any weights and measures official in the
14 performance of his or her duties; or

15 (5) Violate any provisions of this act or regulations promulgated under
16 it.

17
18 SECTION 23. Civil penalties.

19 (a)(1) Assessment of penalties. Any person who by himself or herself,
20 by his or her servant or agent, or as the servant or agent of another person,
21 commits any of the acts enumerated in section 22 may be assessed by the board
22 a civil penalty of:

23 (A) Not less than one hundred dollars (\$100) nor more than
24 three hundred dollars (\$300) for a first violation;

25 (B) Not less than four hundred dollars (\$400) nor more than
26 six hundred dollars (\$600) for a second violation within three (3) years after
27 the date of the first violation; and

28 (C) Not less than seven hundred dollars (\$700) nor more
29 than one thousand dollars (\$1,000) for a third violation within three (3)
30 years after the date of the first violation.

31 (2) For a violation to be considered as a second or subsequent
32 offense, it must be a repeat of a violation as enumerated in Section 22.

33 (b) Administrative hearing. Any person subject to a civil penalty
34 shall have a right to request an administrative hearing within ten (10)
35 calendar days after receipt of the notice of the penalty. The board or
36 subcommittee thereof is authorized to conduct the hearing after giving

1 appropriate notice to the respondent. The decision of the board shall be
2 subject to appropriate judicial review.

3 (c) Collection of penalties. If the respondent has exhausted his or
4 her administrative appeals and the civil penalty has been upheld, he or she
5 shall pay the civil penalty within twenty (20) calendar days after the
6 effective date of the final decision. If the respondent fails to pay the
7 penalty, a civil action may be brought by the board in any court of competent
8 jurisdiction to recover the penalty. Any civil penalty collected under this
9 act shall be transmitted to the Plant Board Fund.

10
11 SECTION 24. Criminal penalties.

12 (a) Misdemeanor. Any person who intentionally commits any of the acts
13 enumerated in section 22 shall be guilty of a Class A misdemeanor.

14
15 SECTION 25. Restraining order and injunction.

16 The director is authorized to apply to any court of competent
17 jurisdiction for a restraining order, or a temporary or permanent injunction,
18 restraining any person from violating any provision of this act.

19
20 SECTION 26. Presumptive evidence.

21 Whenever there shall exist a weight or measure or weighing or measuring
22 device in or about any place in which or from which buying or selling is
23 commonly carried on, there shall be a rebuttable presumption that such weight
24 or measure or weighing or measuring device is regularly used for the business
25 purposes of that place.

26
27 SECTION 27. Regulations to be unaffected by repeal of prior enabling
28 statute.

29 The adoption of this act or any of its provisions shall not affect any
30 regulations promulgated pursuant to the authority of any earlier enabling
31 statute unless inconsistent with this act or modified or revoked by the board.

32
33 SECTION 28. The Arkansas Bureau of Standards may by regulation adopted
34 pursuant to the Arkansas Administrative Procedure Act adopt as a regulation of
35 the bureau specifications, tolerances, and regulations for commercial weighing
36 and measuring devices set out in the National Institute of Standards and

1 Technology Handbooks 44 and 130, or in any similar publication issued by the
2 National Institute of Standards. In drafting the regulations, the bureau
3 shall consider whether the specifications, tolerances, and regulations
4 published by the National Institute of Standards and Technology are consistent
5 with the needs of Arkansas businesses and consumers and may modify, amend or
6 delete suggested language found in the NIST handbooks.

7
8 SECTION 29. Arkansas Code 4-18-216(c)(2) is repealed.

9 ~~(2) The specifications, tolerances, and regulations for commercial~~
10 ~~weighing and measuring devices, together with amendments thereto, as~~
11 ~~recommended by the National Institute of Standards and Technology and~~
12 ~~published in National Institute of Standards and Technology Handbook 44 and~~
13 ~~Handbook 130 and supplements thereto, or in any publication revising or~~
14 ~~superseding Handbook 44 and Handbook 130, shall be the specifications,~~
15 ~~tolerances, and regulations for commercial weighing and measuring devices of~~
16 ~~the State of Arkansas, except insofar as specifically modified, amended, or~~
17 ~~rejected by a regulation issued by the Arkansas Bureau of Standards of the~~
18 ~~State Plant Board.~~

19
20 SECTION 30. EMERGENCY CLAUSE. It is hereby found and determined by the
21 General Assembly that the present state laws and regulatory authority
22 regarding weights and measures are outdated; that this act adopts modern
23 standards and grants the Director of the State Plant Board appropriate
24 authority to maintain up-to-date standards hereafter; and that until this act
25 becomes effective the employees of the Arkansas Bureau of Standards will
26 remain hampered in performing their lawful duties. Therefore, an emergency is
27 declared to exist and this act being immediately necessary for the
28 preservation of the public peace, health and safety shall become effective on
29 the date of its approval by the Governor. If the bill is neither approved nor
30 vetoed by the Governor, it shall become effective on the expiration of the
31 period of time during which the Governor may veto the bill. If the bill is
32 vetoed by the Governor and the veto is overridden, it shall become effective
33 on the date the last house overrides the veto.

34 */s/ Wooldridge, et al.*