

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 1152

H. P. 967

House of Representatives, March 1, 1973

Reported by Mr. Rollins from Committee on Agriculture and printed under
Joint Rules No. 18.

E. LOUISE LINCOLN, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-THREE

AN ACT to Revise the Maine Weights and Measures Law.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. R. S., T. 10, § 2302, repealed and replaced. Section 2302 of Title 10 of the Revised Statutes, as amended by section 1 of chapter 178 of the public laws of 1965, is repealed and the following enacted in place thereof:

§ 2302. Definitions

As used in this chapter, unless the context otherwise indicates, the following words and phrases shall have the following meanings:

1. Cord;

A. Standard cord. A standard cord is a unit of measure of wood products 4 feet wide, 4 feet high and 8 feet long; or its equivalent, containing 128 cubic feet;

(1) A cord when used in connection with pulpwood, slabs or edgings or manufacture of toothpicks, tongue depressors and similar items shall mean the volume of wood contained in a space 4 feet wide, 4 feet high and 8 feet long, or its equivalent, when the wood is ranked and well stowed;

(2) A cord when used in connection with sawdust, chips or shavings shall mean the volume of material contained in 128 cubic feet at the time of sale;

(3) A cord of fitted fuel wood, not exceeding 16 inches in length, when sold loose shall contain 144 cubic feet;

- B. Face cord. A face cord is a unit of measure 4 feet high and 8 feet long, or its equivalent, containing 32 square feet. The length of sticks shall be agreed upon by both parties;
2. Correct. "Correct" as used in connection with weights and measures means conformance to all applicable requirements of this chapter;
3. Dealer. "Dealer" shall mean any person engaged in the business of dealing in, selling, buying, exchanging or trading in weighing or measuring devices in this State;
4. Licensed public weighmaster. "Licensed public weighmaster" shall mean and refer to all persons who shall, for hire, weigh or measure any commodity, produce or article and issue therefor, a weight certificate, which shall be accepted as the accurate weight, upon which the purchase or sale of such commodity is based;
5. Package. "Package" means any commodity put up or packaged in any manner in advance of sale in units suitable for either wholesale or retail sale;
6. Person. "Person" means both plural and the singular, as the case demands, and includes individuals, partnerships, corporations, companies, societies and associations;
7. Primary standards. "Primary standards" means the physical standards of the State which serve as the legal reference from which all other standards and weights and measures are derived;
8. Repairman. "Repairman" shall mean any person engaged in the business of adjusting or repairing weighing or measuring devices in this State or an employee thereof engaged in such business.
9. Sale from bulk. "Sale from bulk" means the sale of commodities when the quantity is determined at the time of sale;
10. Sealer and deputy sealer. "Sealer" and "deputy sealer" shall mean, respectively, a sealer of weights and measures, and a deputy sealer of weights and measures, of a municipality or of several municipalities;
11. Secondary standards. "Secondary standards" means the physical standards which are traceable to the primary standards through comparison, using acceptable laboratory procedures and used in the enforcement of weights and measures laws and regulations;
12. State sealer and deputy state sealer. "State sealer" and "deputy state sealer" shall mean, respectively, the State Sealer of Weights and Measures and the Deputy State Sealer of Weights and Measures;
13. Weight. "Weight" as used in connection with any commodity means net weight;
14. Weights or measures. "Weights or measures," or both, means all weights and measures of every kind, instruments and devices for weighing and measuring and any appliance and accessories associated with any or all such instruments and devices.

Sec. 2. R. S., T. 10, §§ 2303-2305, repealed. Sections 2303 to 2305 of Title 10 of the Revised Statutes are repealed.

Sec. 3. R. S., T. 10, §§ 2351-2354, repealed and replaced. Sections 2351 to 2354 of Title 10 of the Revised Statutes are repealed and the following enacted in place thereof:

§ 2351. Systems of weights and measures

The system of weights and measures in customary use in the United States and the metric system of weights and measures are jointly recognized and either one or both of these systems shall be used for all commercial purposes in the State. The definitions of basic units of weight and measure, the tables of weight and measure and weights and measures equivalents as published by the National Bureau of Standards are recognized and shall govern weighing and measuring equipment and transactions in the State.

§ 2352. Physical standards

Weights and measures that are traceable to the United States prototype standards supplied by the Federal Government, or approved as being satisfactory by the National Bureau of Standards, shall be the state primary standards of weights and measures and shall be maintained in such calibration as prescribed by the National Bureau of Standards. All secondary standards may be prescribed by the state sealer and shall be verified upon their initial receipt and as often thereafter as deemed necessary by the state sealer.

§ 2353. Technical requirements for commercial devices

The specifications, tolerances and other technical requirements for commercial weighing and measuring devices as adopted by the National Conference on Weights and Measures and published in National Bureau of Standards Handbook 44, "Specifications, Tolerances and Other Technical Requirements for Commercial Weighing and Measuring Devices," and supplements thereto or revisions thereof, shall apply to commercial weighing and measuring devices in the State, except insofar as modified or rejected by regulation.

§ 2354. Municipal standards and equipment

The municipal officers of each municipality for which a sealer has been appointed as provided for by section 2451 shall procure at the expense of the municipality, such standards of weight and measure and such additional equipment to be used in the enforcement of this chapter in such municipality, as may be prescribed by the state sealer.

Sec. 4. R. S., T. 10, § 2355, repealed. Section 2355 of Title 10 of the Revised Statutes is repealed.

Sec. 5. R. S., T. 10, §§ 2402 and 2403, repealed and replaced. Sections 2402 and 2403 of Title 10 of the Revised Statutes are repealed and the following enacted in place thereof:

§ 2402. Powers and duties

The state sealer shall:

1. Federal standards. Maintain traceability of the state standards to the National Bureau of Standards;

2. Enforcement. Enforce this chapter;

3. Regulations. Issue reasonable regulations for the enforcement of this chapter, which regulations shall have the force and effect of law;

4. Standards. Establish standards of weight, measure or count, reasonable standards of fill and standards for the presentation of cost per unit information for any packaged commodity;

5. Exemptions. Grant any exemptions from this chapter or any regulations promulgated pursuant thereto, when appropriate to the maintenance of good commercial practices within the State;

6. Investigations. Conduct investigations to ensure compliance with this chapter;

7. Delegation of responsibility. Delegate to appropriate personnel any of these responsibilities for the proper administration of his office;

8. Tests. Test annually the standards of weight and measure used by any city or county within the State and approve the same when found to be correct;

9. Inspection—sale. Inspect and test weights and measures kept, offered or exposed for sale;

10. —commercial use. Inspect and test to ascertain if they are correct, weights and measures commercially used;

A. In determining the weight, measure or count of commodities or things sold, or offered or exposed for sale, on the basis of weight, measure or count, or

B. In computing the basic charge or payment for services rendered on the basis of weight, measure or count;

11. —institutions. Test all weights and measures used in checking the receipt or disbursement of supplies in every institution for the maintenance of which funds are appropriated by the Legislature;

12. Approval or rejection. Approve for use, and may mark, such weights and measures as he finds to be correct and shall reject and mark as rejected such weights and measures as he finds to be incorrect. Weights and measures that have been rejected may be seized, if not corrected within the time specified or if used or disposed of in a manner not specifically authorized. The state sealer shall condemn and may seize weights and measures found to be incorrect that are not capable of being made correct;

13. Sampling. Weigh, measure or inspect packaged commodities kept, offered or exposed for sale, sold or in the process of delivery, to determine whether they contain the amounts represented and whether they are kept, offered or exposed for sale in accordance with this chapter or regulations

promulgated pursuant thereto. In carrying out this section, the state sealer shall employ recognized sampling procedures such as are designated in National Bureau of Standards Handbook 67, "Checking Prepackaged Commodities;"

14. **Appropriate measure.** Prescribe, by regulation, the appropriate term or unit of weight or measure to be used, whenever he determines in the case of a specific commodity that an existing practice of declaring the quantity by weight, measure, numerical count or combination thereof, does not facilitate value comparisons by consumers or offers an opportunity for consumer confusion;

15. **Variations.** Allow reasonable variation from the stated quantity of contents which shall include those caused by loss or gain of moisture during the course of good distribution practice or by unavoidable deviations in good manufacturing practice only after the commodity has entered intrastate commerce;

16. **Personnel training.** Provide for the weights and measures training of inspection personnel and shall establish minimum training requirements which shall be met by all municipal and state weights and measures inspection personnel in the State;

17. **Standards to enforcement.** Prescribe the standards of weight and measure and additional equipment, methods of test and inspection to be employed in the enforcement of this chapter. The state sealer may prescribe or provide, or both, the official test and inspection forms to be used in the enforcement of this chapter.

§ 2403. Special police powers

When necessary for the enforcement of this chapter or regulations promulgated pursuant thereto, the state sealer is:

1. **Entry.** Authorized to enter any commercial premises during normal business hours, except that in the event such premises are not open to the public, he shall first present his credentials and obtain consent before making entry thereto, unless a search warrant has previously been obtained;

2. **Orders.** Empowered to issue stop-use, hold and removal orders with respect to any weights and measures commercially used and stop-sale, hold and removal orders with respect to any packaged commodities or bulk commodities kept, offered or exposed for sale;

3. **Seizure.** Empowered to seize, for use as evidence, without formal warrant, any incorrect or unapproved weight, measure, package or commodity found to be used, retained, offered or exposed for sale or sold in violation of this chapter or regulations promulgated pursuant thereto;

4. **Stopping vehicles.** Empowered to stop any commercial vehicle and, after presentment of his credentials, inspect the contents, require that the person in charge of that vehicle produce any documents in his possession concerning the contents and require him to proceed with the vehicle to some specified place for inspection.

Sec. 6. R. S., T. 10, §§ 2404, 2406-2410, repealed. Section 2404 and sections 2406 to 2410 of Title 10 of the Revised Statutes are repealed.

Sec. 7. R. S., T. 10, §§ 2451 and 2453, repealed and replaced. Sections 2451 and 2453 of Title 10 of the Revised Statutes are repealed and the following enacted in place thereof:

§ 2451. Election by municipal officers

The municipal officers of each municipality shall elect or appoint a sealer of weights and measures, and a deputy sealer if necessary, not necessarily a resident therein, and said sealer and deputy shall hold office during their efficiency and the faithful performance of their duties. On complaint being made to said officers of the inefficiency or neglect of duty of a sealer or deputy sealer, the said officers shall set a date for and give notice of a hearing to the complainant, sealer complained of and the state sealer. If evidence satisfies the said officers that the said sealer or deputy sealer has been inefficient or has neglected his duty, they may remove him from office and elect or appoint another in his stead. The state sealer shall have jurisdiction over said sealer or deputy sealer and any vacancy caused by death or resignation shall be filled by election or appointment by said municipal officers within 30 days. For each month that said municipal officers neglect their duty, they severally shall forfeit \$10. Within 10 days after each such election or appointment, the clerk of each municipality shall communicate the name of the person so elected or appointed to the state sealer and for neglect of this duty shall forfeit \$10. Such sealer of weights and measures in any municipality may be sealer for several municipalities, if such is the pleasure of the municipal officers therein, provided such action received the approval of the state sealer.

§ 2453. —powers and duties

Any weights and measures official elected or appointed for a municipality shall have the duties enumerated in section 2402, subsections 2 to 9 and the powers enumerated in section 2403. These powers and duties shall extend to their respective jurisdictions.

Sec. 8. R. S., T. 10, § 2454, repealed. Section 2454 of Title 10 of the Revised Statutes is repealed.

Sec. 9. R. S., T. 10, §§ 2601-2616, repealed. Sections 2601 to 2616 of Title 10 of the Revised Statutes are repealed.

Sec. 10. R. S., T. 10, c. 501, sub-c. VII-A, additional. Chapter 501 of Title 10 of the Revised Statutes is amended by adding a new subchapter VII-A to read as follows:

**SUBCHAPTER VII-A
SALE OF COMMODITIES**

§ 2621. Misrepresentation of quantity

No person shall sell, offer or expose for sale less than the quantity he represents, nor take any more than the quantity he represents when, as buyer,

he furnishes the weight or measure by means of which the quantity is determined.

§ 2622. Misrepresentation of pricing

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

§ 2623. Method of sale

Except as otherwise provided by the state sealer, commodities in liquid form shall be sold by liquid measure or by weight and commodities not in liquid form shall be sold only by weight or by measure or by count, so long as the method of sale provides accurate quantity information. Notwithstanding anything to the contrary contained anywhere in this chapter, wrapped paper rolls, paper rolls on nonreturnable cores and wrapped bundles of paper may be marked and sold on a gross weight basis and sheeted paper may be marked and sold on a specified ream weight basis and all contracts and documents relating to the marking or sale of any of such commodities shall be construed accordingly unless a contrary intent clearly appears, except that none of such commodities shall be so sold at retail, or so marked for sale at retail, if such sale or marking is contrary to such reasonable regulations consistent with trade practices in the paper industry as the state sealer may from time to time issue.

§ 2624. Sale from bulk

Whenever the quantity is determined by the seller, bulk sales in excess of \$20 and all bulk deliveries of heating fuel shall be accompanied by a delivery ticket containing the following information:

1. Name and address. The name and address of the vendor and purchaser;
2. Date. The date delivered;
3. Quantity. The quantity delivered and the quantity upon which the price is based, if this differs from the delivered quantity;
4. Identity. The identity in the most descriptive terms commercially practicable, including any quality representation made in connection with the sale;
5. Count. The count of individually wrapped packages if more than one.

§ 2625. Information required on packages

Except as otherwise provided in this chapter or by regulations promulgated pursuant thereto, any package kept for the purpose of sale or offered or exposed for sale shall bear on the outside of the package a definite, plain and conspicuous declaration of:

1. Identity. The identity of the commodity in the package, unless the same can easily be identified through the wrapper or container;

2. Quantity. The quantity of contents in terms of weight, measure or count;

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

§ 2626. Declarations of unit price on random packages

In addition to the declarations required by section 2625, any package being one of a lot containing random weights of the same commodity and bearing the total selling price of the package shall bear on the outside of the package a plain and conspicuous declaration of the price per single unit of weight.

§ 2627. Advertising packages for sale

Whenever a packaged commodity is advertised in any manner with the retail price stated, there shall be closely and conspicuously associated with the retail price a declaration of quantity as is required by law or regulation to appear on the package. Where a dual declaration is required, only the declaration that sets forth the quantity in terms of the smaller unit of weight or measure need appear in the advertisement.

§ 2628. Conformity to national method of sale regulations

The methods, units, terms and other requirements for the sale of commodities, as adopted by the National Conference on Weights and Measures and published in the National Bureau of Standards, "Model State Method of Sale of Commodities Regulation," and supplements thereto or revisions thereof, shall apply to the sale of commodities in the State of Maine, except insofar as specifically modified, amended or rejected by a regulation issued by the state sealer.

§ 2629. Conformity to national packaging and labeling regulations

The packaging and labeling requirements for consumer and nonconsumer packages, as adopted by the National Conference on Weights and Measures and published in the National Bureau of Standards, "Model State Packaging and Labeling Regulation," and supplements thereto or revisions thereof, shall apply to any package kept for the purpose of sale or offered or exposed for sale in the State of Maine, except insofar as specifically modified, amended or rejected by a regulation issued by the state sealer.

Sec. 11. R. S., T. 10, § 2751, repealed and replaced. Section 2751 of Title 10 of the Revised Statutes, as amended by section 2 of chapter 178 of the public laws of 1965, is repealed and the following enacted in place thereof:

§ 2751. Offenses and penalties

Any person who violates the following enumerated provisions or any provision of this chapter or regulations promulgated pursuant thereto, for which a specific penalty has not been prescribed, shall be guilty of a misdemeanor and upon a first conviction thereof shall be punished by a fine of not less than \$50 or more than \$500, or by imprisonment for not more than 3 months, or

by both. Upon a subsequent conviction thereof, he shall be punished by a fine of not less than \$100 or more than \$1,000, or by imprisonment for up to one year, or by both.

No person shall:

1. Use or have in possession. Use or have in possession for use in commerce any incorrect weight or measure;
2. Remove tag, seal or mark. Remove any tag, seal or mark from any weight or measure without specific written authorization from the proper authority;
3. Hinder or obstruct. Hinder or obstruct any weights and measures official in the performance of his duties;
4. Use of scale. Use any scale which requires permanent installation which has been relocated without first having the same tested and approved by the state sealer or a sealer.

Sec. 12. R. S., T. 10, §§ 2753-2755, additional. Title 10 of the Revised Statutes is amended by adding 3 new sections to read as follows:

§ 2753. Injunction

The state sealer is authorized to apply to any court of competent jurisdiction for a temporary or permanent injunction restraining any person from violating any provision of this chapter.

§ 2754. Presumptive evidence

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

§ 2755. Regulations to be unaffected by repeal or prior enabling statute

The adoption of this Act or any of its provisions shall not affect any regulations promulgated pursuant to the authority of any earlier enabling statute unless inconsistent with this Act or modified or revoked by the state sealer.