

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 321

Introduced by Hansen, B., 16.

Read first time January 16, 2019

Committee:

1 A BILL FOR AN ACT relating to the Weights and Measures Act; to amend
2 sections 89-186 and 89-187.01, Reissue Revised Statutes of Nebraska,
3 and sections 89-187 and 89-187.02, Revised Statutes Cumulative
4 Supplement, 2018; to update certain standards and regulations; to
5 change provisions relating to Director of Agriculture duties and
6 Department of Agriculture device inspection fees; to remove obsolete
7 provisions; to eliminate a signature requirement on a permit
8 application; and to repeal the original sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 89-186, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 89-186 (1) The Legislature hereby adopts by reference the following:

4 (a) The standards of the National Conference on Weights and Measures
5 published in National Institute of Standards and Technology Handbook 44
6 entitled Specifications, Tolerances, and Other Technical Requirements for
7 Weighing and Measuring Devices as it existed on January 1, 2019 ~~2003~~,
8 except Section 3.31. Vehicle - Tank meters. UR.2.2. Ticket Printer,
9 ~~Printers~~; Customer Ticket, Section 2.20. Scales, N.3. Minimum Test
10 Weights and Test Loads; and Table 4, are not adopted. In addition to the
11 language found in Section 3.30. Liquid-Measuring Devices, S.1.6.4.,
12 S.1.6.5., UR.3.2., and UR.3.3. of such handbook, any computing device in
13 which a product or grade is offered for sale at more than one unit price
14 may also compute at the lowest possible unit price for such transaction.
15 All prices shall still be displayed or posted on the face of the
16 dispenser. Such handbook shall govern all commercial and law enforcement
17 weighing and measuring devices in the state;

18 (b) The Uniform Regulation for the Method of Sale of Commodities of
19 the National Conference on Weights and Measures published in National
20 Institute of Standards and Technology Handbook 130 entitled Uniform Laws
21 and Regulations in the Areas of Legal Metrology and Engine Fuel Quality
22 as it existed on January 1, 2019 ~~2003~~. Such handbook shall be used to
23 determine the proper units of measurement to be used in the keeping for
24 sale or sale of commodities;

25 (c) The Uniform Packaging and Labeling Regulation of the National
26 Conference on Weights and Measures published in National Institute of
27 Standards and Technology Handbook 130 entitled Uniform Laws and
28 Regulations in the Areas of Legal Metrology and Engine Fuel Quality as it
29 existed on January 1, 2019 ~~2003~~. Such handbook shall govern the packaging
30 and labeling by weight, measure, or count of commodities kept for sale or
31 sold in this state; and

1 (d) The procedures designated in National Institute of Standards and
2 Technology Handbook 133 entitled Checking the Net Contents of Packaged
3 Goods as it existed on January 1, 2019 ~~2003~~.

4 (2) Copies of the handbooks adopted by reference in this section
5 shall be filed with the Secretary of State, Clerk of the Legislature, and
6 Department of Agriculture. Copies filed with the Clerk of the Legislature
7 shall be filed electronically.

8 (3) Whenever there exists an inconsistency between the provisions of
9 the Weights and Measures Act other than this section and any of the
10 handbooks adopted by reference, the requirements of such provisions of
11 the act shall control.

12 Sec. 2. Section 89-187, Revised Statutes Cumulative Supplement,
13 2018, is amended to read:

14 89-187 For purposes of administering and enforcing the Weights and
15 Measures Act, the director is authorized to ~~The director shall:~~

16 (1) Maintain traceability of the primary standards to the National
17 Institute of Standards and Technology;

18 (2) Enforce the provisions of the Weights and Measures Act;

19 (3) Adopt and promulgate reasonable rules and regulations for the
20 enforcement of the act including the following:

21 (a) Requirements for the voluntary registration of sales and repair
22 personnel for commercial weighing and measuring devices including:

23 (i) Registration fees for such personnel which shall not exceed the
24 actual cost to defray the operation of the voluntary registration
25 program;

26 (ii)(A) Qualifications for registration, which may include
27 examinations, (B) performance standards to maintain registration, (C)
28 types of equipment necessary for the work to be performed by the
29 personnel, (D) responsibilities and privileges of registration, and (E)
30 revocation and suspension of such registration and probation of the
31 registrant; and

1 (iii) Minimum standards for the installation and maintenance of
2 commercial weighing and measuring devices;

3 (b) Additional standards not specifically provided for in the act;

4 (c) Standards for (i) attachments or parts entering into the
5 construction or installation of commercial weighing and measuring devices
6 which shall tend to secure correct results in the use of such devices and
7 (ii) the setting of laboratory fees which shall not exceed the actual
8 cost for testing, correcting, calibrating, and verifying secondary
9 standards and the establishment of standard laboratory operating
10 procedures;

11 (d) Requirements for the suitable use of commercial weighing and
12 measuring devices; and

13 (e) Guidelines for the appropriate method of weighing or measuring
14 whenever the director determines that such guidelines would further the
15 purpose of the act;

16 (4) Establish standards of weight, measure, or count, reasonable
17 standards of fill, and standards for the presentation of cost-per-unit
18 information for any commodity;

19 (5) Upon an application filed with the department by the applicant,
20 grant exemptions, including specific exemptions for single-use commercial
21 weighing and measuring devices, from the provisions of the act or the
22 rules and regulations when the applicant on such application provides
23 assurances, acceptable to the director, that such exemption is
24 appropriate to the maintenance of good commercial practices within the
25 state. Notwithstanding any other provision of the act, meters used by a
26 public utility system for the measurement of electricity, natural or
27 manufactured gas, water, or the usage of communication services, the
28 appliances or accessories associated with such meters, and all weighing
29 and measuring devices inspected or tested by the Public Service
30 Commission shall be exempt from the registration, inspection, and testing
31 requirements of the act, except that this exemption shall not apply to

1 meters which determine the weight or measurement of motor fuel;

2 (6) Conduct investigations to insure compliance with the act;

3 (7) Delegate to appropriate personnel any of these responsibilities
4 for the proper administration of the director's office;

5 (8) In his or her discretion, inspect and test weighing and
6 measuring devices kept for sale or sold;

7 (9) Inspect and test annually or as frequently as the director deems
8 ~~and from time to time, as in the director's judgment seems~~ necessary, to
9 ascertain whether commercial weighing and measuring devices are correct;

10 (10) Register and test as far as practical all commercial weighing
11 and measuring devices used in checking the receipt or disbursement of
12 supplies in every institution for which funds are appropriated by the
13 Legislature;

14 (11) Test ~~annually and~~ at the request of the Nebraska State Patrol
15 all weighing and measuring devices used for the enforcement of sections
16 60-3,144, 60-3,147, and 60-6,294. The agency responsible for such
17 weighing and measuring devices shall pay the department for the actual
18 cost of such tests. The department shall bill test fees to such agency
19 upon completion of the test;

20 (12) Approve for use and may mark commercial weighing and measuring
21 devices which the director finds to be correct and shall reject and mark
22 or tag as rejected such commercial weighing and measuring devices which
23 the director finds to be not correct or not registered and inspected in
24 accordance with the Weights and Measures Act. Commercial weighing and
25 measuring devices that have been rejected may be seized if not made
26 correct within the time specified or if used or disposed of in a manner
27 not specifically authorized. The director shall condemn and may seize
28 commercial weighing and measuring devices which are found not to be
29 correct and not capable of being made correct;

30 (13) Weigh, measure, or inspect commodities kept for sale, sold, or
31 in the process of delivery to determine whether they contain the amounts

1 represented and whether they are kept for sale or sold in accordance with
2 the act or the rules and regulations. When commodities are found not to
3 contain the amounts represented or are found to be kept for sale, sold,
4 or in the process of delivery in violation of the act, the director may
5 issue stop-sale, hold, or removal orders and may mark or tag such
6 commodities as being in violation of the act. In carrying out the
7 provisions of this section, the director shall employ recognized
8 procedures pursuant to subdivisions (1)(b) through (d) of section 89-186;

9 (14) Provide for the weights and measures training of inspection
10 personnel and adopt and promulgate by rule and regulation minimum
11 training requirements which shall be met by all inspection personnel;

12 (15) Adopt and promulgate rules and regulations prescribing the
13 appropriate term or unit of measurement to be used whenever the director
14 determines in the case of a specific commodity that an existing practice
15 of declaring the quantity by weight, measure, numerical count, or
16 combination thereof does not facilitate value comparisons by consumers or
17 offers an opportunity for consumer confusion;

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

23 (17) Verify advertised prices, price representations, and point-of-
24 sale systems, as deemed necessary, to determine: (a) The accuracy of
25 prices, quantity, and computations; (b) the correct use of the equipment;
26 and (c) if such systems utilize scanning or coding means in lieu of
27 manual entry, the accuracy of prices and quantity printed or recalled
28 from a data base;

29 (18) On or before July 1 of each year, notify all persons who have
30 registered any commercial weighing or measuring device of the amount of
31 fees which are due and that the fees are due on August 1 and shall be

1 delinquent after such date;

2 (19) Require all persons who operate a weighing and measuring
3 establishment to obtain a permit to operate such establishment pursuant
4 to section 89-187.01 and to pay to the department an application permit
5 fee pursuant to section 89-187.02;

6 (20) Require all persons who operate a weighing and measuring
7 establishment to, on or before August 1 of each year:

8 (a) Register each commercial weighing and measuring device with the
9 department upon forms furnished by the director;

10 (b) Pay to the department a registration fee of four dollars; and

11 (c) Pay to the department a device inspection fee.

12 ~~(i) The device inspection fee due August 1, 2003, shall be the~~
13 ~~amount in column A of subdivision (20)(c)(iii) of this section.~~

14 (i) (ii) The device inspection fee shall be due August 1, 2004, and
15 each August 1 and thereafter shall be set by the director on or before
16 July 1 of each year. The director may raise or lower the device
17 inspection fees each year to meet the criteria in this subdivision, but
18 the fee shall not be greater than the amount in column B of subdivision
19 (20)(c)(ii) ~~(20)(c)(iii)~~ of this section. The same percentage shall be
20 applied to each device category for all device inspection fee increases
21 or decreases. The director shall use the amounts in column A of
22 subdivision (20)(c)(ii) of this section ~~device inspection fees set for~~
23 ~~the fees due August 1, 2003,~~ as a base for future fee increases or
24 decreases. The director shall determine the fees based on estimated
25 annual revenue and fiscal year-end cash fund balances as follows:

26 (A) The estimated annual revenue shall not be greater than one
27 hundred seven percent of program cash fund appropriations allocated for
28 the Weights and Measures Act; and

29 (B) The estimated fiscal year-end cash fund balance shall not be
30 greater than seventeen percent of program cash fund appropriations
31 allocated for the act.

1	<u>(ii)</u> (iii)		
2	Scales:	A	B
3	Up through 35 pounds capacity	7.96	14.34
4	Multiunit Scales	51.00	80.37
5	Over 35 through 1,000 pounds capacity	15.13	25.35
6	Over 1,000 through 4,000 pounds capacity	31.87	51.03
7	Over 4,000 through 50,000 pounds capacity	36.65	58.36
8	Over 50,000 through 150,000 pounds capacity	39.04	62.03
9	Over 150,000 pounds capacity	86.87	135.40
10	Length Measuring Devices:		
11	Cordage or fabric	16.56	27.55
12	Pumps:		
13	Service Station Dispensers – per		
14	measuring element	5.09	9.94
15	High-capacity service station		
16	dispensers over 20 gallons per		
17	minute – per dispensing element	17.52	29.02
18	Compressed natural gas – per		
19	dispensing element	91.65	142.74
20	Meters:		
21	Vehicle tank meters	14.17	23.88
22	Loading rack meters	31.87	51.03
23	Liquid petroleum gas meters	40.00	63.50
24	Liquid fertilizer and herbicide meters	36.65	58.36
25	Liquid feed meters	36.65	58.36
26	Cryogenic	53.39	84.04
27	Mass Flow Metering Systems:		
28	Mass flow meters (all liquid)	78.26	122.19;
29	and		
30	(21) Require persons delinquent under subdivision (20) of this		

1 section to pay an administrative fee of twenty-five percent of the annual
2 fees due for each month any such fees are delinquent not to exceed one
3 hundred percent of such fees. Such administrative fees paid shall be in
4 addition to the annual fees due. The purpose of the additional
5 administrative fee is to cover the administrative costs associated with
6 collecting fees. All money collected as an additional administrative fee
7 shall be remitted to the State Treasurer for credit to the Weights and
8 Measures Administrative Fund.

9 Sec. 3. Section 89-187.01, Reissue Revised Statutes of Nebraska, is
10 amended to read:

11 89-187.01 ~~A On and after August 1, 1992,~~ a person shall not operate
12 a weighing and measuring establishment in the State of Nebraska unless
13 such person holds a valid permit from the department. If the permit holder
14 has more than one location with commercial weighing and measuring
15 devices, he or she shall have a permit for each location.

16 Sec. 4. Section 89-187.02, Revised Statutes Cumulative Supplement,
17 2018, is amended to read:

18 89-187.02 Application for a permit to operate a weighing and
19 measuring establishment shall be made to the director on forms prescribed
20 and furnished by the department. Such application shall include the full
21 name and mailing address of the applicant; the names and addresses of any
22 partners, members, or corporate officers; the name and address of the
23 person authorized by the applicant to receive notices and orders of the
24 department as provided in the Weights and Measures Act; whether the
25 applicant is an individual, partnership, limited liability company,
26 corporation, or other legal entity; and the location and type of all
27 commercial weighing and measuring devices; ~~and the signature of the~~
28 ~~applicant.~~ An application for a permit shall be made prior to the
29 operation of a weighing and measuring establishment. The application
30 shall be accompanied by a one-time permit fee of five dollars and the
31 annual device registration and inspection fees required in section

1 89-187. The full annual device registration and inspection fees are
2 required regardless of when during the year the device is put into
3 operation.

4 Sec. 5. Original sections 89-186 and 89-187.01, Reissue Revised
5 Statutes of Nebraska, and sections 89-187 and 89-187.02, Revised Statutes
6 Cumulative Supplement, 2018, are repealed.