

WEIGHTS AND MEASURES ACT

- Administration:** This Act is administered by the Nebraska Department of Agriculture, State Office Building, 301 Centennial Mall South, Lincoln, Nebraska 68509. Telephone: (402) 471-3422.
- Revisions:** This Act was last revised during the 2013 Session of the Nebraska Legislature.
- Rules:** Three regulations have been promulgated under this Act. They are as follows:
- Title 27, Chapter 1, Nebraska Administrative Code - Voluntary Registration of Servicemen and Service Agencies for Commercial Weighing and Measuring Devices.
- Title 27, Chapter 2, Nebraska Administrative Code - Weights and Measures Standard Laboratory Operating Procedures and Fees.
- Title 27, Chapter 3, Nebraska Administrative Code - Scale Regulations.

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89-182.01. Act, how cited. Sections 89-182.01 to 89-1,103 shall be known and may be cited as the Weights and Measures Act.

89-183. Terms, defined. For purposes of the Weights and Measures Act:

- (1) Actual cost means all the costs associated with the enforcement of the act, including overhead, administration, personnel, and equipment expenses;
- (2) Certificate of Conformance means a National Type Evaluation Program Certificate of Conformance issued by (a) the National Institute of Standards and Technology or (b) the National Conference on Weights and Measures establishing that the commercial weighing and measuring device, based on testing, meets the requirements of National Institute of Standards and Technology Handbook 44;
- (3) Commercial weighing and measuring device means any weights and measures or weighing and measuring device used or employed in commerce in (a) establishing the size, quantity, extent, area, or measurement of any commodity sold, offered, or submitted for hire, (b) computing any basic charge or payment for services rendered on the basis of weight, measure, or count, or (c) establishing eligibility for any award. A commercial weighing and measuring device also includes any accessory attached to or used in connection with a commercial weighing or measuring device when such accessory is so designed or installed that its operation affects or may affect the accuracy of the device;
- (4) Commodity means any service or item or any combination of items forming a distinctive product sold in commerce which is affected by any determination of weight, measure, or count;

- (5) Correct, when used in connection with commercial weighing and measuring devices, means conformance to all applicable requirements of the act;
- (6) Department means the Department of Agriculture or its authorized agent;
- (7) Director means the Director of Agriculture or his or her designated employee, representative, or authorized agent;
- (8) Kept for sale, in any of its variant forms, means the possession of commodities by a business which sells such commodities;
- (9) Modification or modified, when used in connection with commercial weighing and measuring devices, means any change which does not alter the original metrological design characteristics as specified by the device manufacturer or National Type Evaluation Program technical policies;
- (10) Net drained weight means the weight of a commodity excluding any materials, substances, or items not considered to be part of the commodity. Materials, substances, or items not considered to be part of the commodity include free liquid, containers, conveyances, bags, wrappers, packaging materials, labels, individual piece coverings, decorative accompaniments, prizes, and coupons;
- (11) Net weight means the weight of a commodity excluding any materials, substances, or items not considered to be part of the commodity. Materials, substances, or items not considered to be part of the commodity include containers, conveyances, bags, wrappers, packaging materials, labels, individual piece coverings, decorative accompaniments, prizes, and coupons;
- (12) Package means any commodity put up or packaged in any container in advance of sale in units suitable for sale;
- (13) Person means any individual, partnership, limited liability company, association, corporation, or organized group of persons, whether incorporated or not;
- (14) Primary standards means the physical standards of the state which serve as the legal reference from which all other standards are derived;
- (15) Sale, in any of its variant forms, means sale, to barter, exchange, offer for sale, or expose for sale, in any of their variant forms, or otherwise supply;
- (16) Sale from bulk means sale, in any of its variant forms, of commodities when the quantity is determined at the time of sale;
- (17) Secondary standards means the physical standards which are traceable to the primary standards through comparisons using acceptable laboratory procedures. Such standards shall be used in the sale of a commodity or in the verification of weights and measures or weighing and measuring devices for accuracy;
- (18) Tare weight means the weight of containers, conveyances, bags, wrappers, packaging materials, labels, individual piece coverings, decorative accompaniments, prizes, coupons, or items not considered to be part of the commodity deducted from the gross weight to determine the weight of the commodity;
- (19) Weighing and measuring device means all instruments and devices of every kind used to determine the quantity of any commodity and includes weights and measures and any appliances and accessories associated with any such instruments and devices except meters, appliances, and accessories which are exempted from the requirements of the act pursuant to subdivision (5) of section 89-187;

(20) Weighing and measuring establishment means a location with one or more commercial weighing and measuring devices or any operation which employs commercial weighing and measuring devices which are mobile; and

(21) Weight, when used in connection with any commodity, means net weight, except when a commodity is sold by drained weight, the term means net drained weight.

89-184. Units of measurement; recognition. The customary units of measurement in use in the United States and the metric units of measurement are jointly recognized, and either one or both of these systems shall be used in commerce within the state. The definitions of basic units of measurement and the tables of measurement and equivalents as published by the National Institute of Standards and Technology are recognized and shall govern weighing and measuring devices, standards, and transactions in the state.

89-185. Standards; primary and secondary. Standards that are traceable to the United States prototype standards supplied by the federal government or approved as being satisfactory by the National Institute of Standards and Technology shall be the primary standards of measurement and shall be maintained so that they are traceable to the National Institute of Standards and Technology. All secondary standards may be prescribed by the director and shall be verified upon their initial receipt and as often thereafter as deemed necessary by the director.

89-186. Handbooks; adoption by reference. (1) The Legislature hereby adopts by reference the following:

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

(b) The Uniform Regulation for the Method of Sale of Commodities of the National Conference on Weights and Measures published in National Institute of Standards and Technology Handbook 130 entitled Uniform Laws and Regulations as it existed on January 1, 2003. Such handbook shall be used to determine the proper units of measurement to be used in the keeping for sale or sale of commodities;

(c) The Uniform Packaging and Labeling Regulation of the National Conference on Weights and Measures published in National Institute of Standards and Technology Handbook 130 entitled Uniform Laws and Regulations as it existed on January 1, 2003. Such handbook shall govern the packaging and labeling by weight, measure, or count of commodities kept for sale or sold in this state; and

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

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

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

89-186.01. Commercial weighing and measuring devices; Certificate of

Conformance; required; when. (1) No person shall sell a commercial weighing and measuring device within the State of Nebraska unless a Certificate of Conformance has been issued for the device except when the device is exempted by subsection (6) of this section.

(2) No person shall use a commercial weighing and measuring device within the State of Nebraska unless a Certificate of Conformance has been issued for the device prior to use except when the device is exempted by subsection (3), (4), or (5) of this section.

(3) Commercial weighing and measuring devices in service in Nebraska prior to September 6, 1991, which meet the specifications, tolerances, and other technical requirements of National Institute of Standards and Technology Handbook 44 shall be exempt from meeting the requirements for the Certificate of Conformance.

(4) Commercial weighing and measuring devices removed from service by the owner or on which the department has issued a removal order after September 6, 1991, and returned to service at a later date shall be modified to meet all specifications, tolerances, and other technical requirements of National Institute of Standards and Technology Handbook 44 adopted by the Legislature on the date of the return to service. Such commercial weighing and measuring devices shall not be required to have been issued a Certificate of Conformance.

(5) Commercial weighing and measuring devices in service prior to September 6, 1991, which are modified after such date shall meet all specifications, tolerances, and other technical requirements of National Institute of Standards and Technology Handbook 44 adopted by the Legislature on the date of the modification. Such commercial weighing and measuring devices shall not be required to have been issued a Certificate of Conformance.

(6) Commercial weighing and measuring devices in service prior to September 6, 1991, and sold after such date shall be modified by the seller, unless the buyer and seller agree by contract to exchange the modification responsibility, to meet all specifications, tolerances, and other technical requirements of National Institute of Standards and Technology Handbook 44 adopted by the Legislature on the date sold. Such commercial weighing and measuring devices shall not be required to have been issued a Certificate of Conformance.

89-187. Director of Agriculture; duties; fees; penalty. The director shall:

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

- (2) Enforce the provisions of the Weights and Measures Act;
- (3) Adopt and promulgate reasonable rules and regulations for the enforcement of the act including the following:
 - (a) Requirements for the voluntary registration of sales and repair personnel for commercial weighing and measuring devices including:
 - (i) Registration fees for such personnel which shall not exceed the actual cost to defray the operation of the voluntary registration program;
 - (ii) (A) Qualifications for registration, which may include examinations, (B) performance standards to maintain registration, (C) types of equipment necessary for the work to be performed by the personnel, (D) responsibilities and privileges of registration, and (E) revocation and suspension of such registration and probation of the registrant; and
 - (iii) Minimum standards for the installation and maintenance of commercial weighing and measuring devices;
 - (b) Additional standards not specifically provided for in the act;
 - (c) Standards for (i) attachments or parts entering into the construction or installation of commercial weighing and measuring devices which shall tend to secure correct results in the use of such devices and (ii) the setting of laboratory fees which shall not exceed the actual cost for testing, correcting, calibrating, and verifying secondary standards and the establishment of standard laboratory operating procedures;
 - (d) Requirements for the suitable use of commercial weighing and measuring devices; and
 - (e) Guidelines for the appropriate method of weighing or measuring whenever the director determines that such guidelines would further the purpose of the act;
- (4) Establish standards of weight, measure, or count, reasonable standards of fill, and standards for the presentation of cost-per-unit information for any commodity;
- (5) Upon an application filed with the department by the applicant, grant exemptions, including specific exemptions for single-use commercial weighing and measuring devices, from the provisions of the act or the rules and regulations when the applicant on such application provides assurances, acceptable to the director, that such exemption is appropriate to the maintenance of good commercial practices within the state. Notwithstanding any other provision of the act, meters used by a public utility system for the measurement of electricity, natural or manufactured gas, water, or the usage of communication services, the appliances or accessories associated with such meters, and all weighing and measuring devices inspected or tested by the Public Service Commission shall be exempt from the registration, inspection, and testing requirements of the act, except that this exemption shall not apply to meters which determine the weight or measurement of motor fuel;
- (6) Conduct investigations to insure compliance with the act;
- (7) Delegate to appropriate personnel any of these responsibilities for the proper administration of the director's office;

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

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

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

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

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

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

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

(15) Adopt and promulgate rules and regulations prescribing the appropriate term or unit of measurement to be used whenever the director 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;

(16) Allow reasonable variations 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;

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

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

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

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

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

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

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

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

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

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

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

(iii)

Scales:	A	B
Up through 35 pounds capacity	7.96	14.34
Multiunit Scales	51.00	80.37
Over 35 through 1,000 pounds capacity	15.13	25.35
Over 1,000 through 4,000 pounds capacity	31.87	51.03
Over 4,000 through 50,000 pounds capacity	36.65	58.36
Over 50,000 through 150,000 pounds capacity	39.04	62.03
Over 150,000 pounds capacity	86.87	135.40

Length Measuring Devices:		
Cordage or fabric	16.56	27.55
Service Station Dispensers -- per measuring element	5.09	9.94
High-capacity service station dispensers over 20 gallons per minute -- per dispensing element	17.52	29.02
Compressed natural gas -- per dispensing element	91.65	142.74
Meters:		
Vehicle tank meters	14.17	23.88
Loading rack meters	31.87	51.03
Liquid petroleum gas meters	40.00	63.50
Liquid fertilizer and herbicide meters	36.65	58.36
Liquid feed meters	36.65	58.36
Cryogenic	53.39	84.04
Mass Flow Metering Systems:		
Mass flow meters (all liquid)	78.26	122.19

and

(21) Require persons delinquent under subdivision (20) of this section to pay a penalty of twenty-five percent of the annual fees due for each month any such fees are delinquent not to exceed one hundred percent of such fees. Such penalties paid shall be in addition to the annual fees due. The department may waive the penalty based upon the existence and extent of any mitigating circumstances that have resulted in the late payment of such fees.

89-187.01. Weighing and measuring establishment; permit required. On and after August 1, 1992, a person shall not operate a weighing and measuring establishment in the State of Nebraska unless such person holds a valid permit from the department. If the permitholder has more than one location with commercial weighing and measuring devices, he or she shall have a permit for each location.

89-187.02. Permit; application; fee. Application for a permit to operate a weighing and measuring establishment shall be made to the director on forms prescribed and furnished by the department. Such application shall include the full name and mailing address of the applicant; the names and addresses of any partners, members, or corporate officers; the name and address of the person authorized by the applicant to receive notices and orders of the department as provided in the Weights and Measures Act; whether the applicant is an individual, partnership, limited liability company, corporation, or other legal entity; the location and type of all commercial weighing and measuring devices; and the signature of the applicant. If the applicant is an individual, the application shall include the applicant's social security number. An application for a permit shall be made prior to the operation of a weighing and measuring establishment. The application shall be accompanied by a one-time permit fee of five dollars and the annual device registration and inspection fees required in section 89-187. The full annual device registration and inspection fees are required regardless of when during the year the device is put into operation.

89-187.03. Permit; placed-in-service report or inspection; denial of permit; procedure. Before issuing a permit to operate a weighing and measuring establishment, the director shall receive a placed-in-service report from a

repairperson, who is registered with the department, or inspect each weighing and measuring device to determine whether the applicant qualifies to hold a permit pursuant to subsection (1) of section 89-187.07 except when the requirements of section 89-187.04 have been met. A placed-in-service report shall be in the form prescribed by the department. A weighing and measuring establishment receiving a placed-in-service report for all of its weighing and measuring devices, passing inspection by the department, or meeting the requirements of section 89-187.04 and otherwise found to qualify to hold a permit pursuant to subsection (1) of section 89-187.07 shall be issued a permit. An applicant who does not receive a permit shall be notified in writing of the grounds for denial, and such applicant shall be afforded the opportunity of a hearing to present evidence that the establishment is qualified to hold a permit pursuant to subsection (1) of section 89-187.07 and should be issued a permit. All such hearings shall be in compliance with the Administrative Procedure Act.

89-187.04. Permit; placed-in-service report or inspection; when not required. An applicant for a permit with commercial weighing and measuring devices registered with the department shall not be required to obtain a placed-in-service report or have such devices pass a new inspection when (1) the director determines that a new inspection is not necessary and (2) the devices have been properly registered for the previous year and all fees have been paid by the applicant.

89-187.05. Permit; posting; changes requiring notice to department.

(1) A weighing and measuring establishment which has a permanent location for commercial weighing and measuring devices shall have a valid permit posted in a conspicuous place at the establishment, and there shall not be a change in ownership, location, or business name without the permitholder obtaining a new permit. Any permit for such establishment shall lapse automatically upon a change of ownership, location, or business name.

(2) A weighing and measuring establishment which does not have a permanent location for commercial weighing and measuring devices shall have a copy of a valid permit posted on or about each device and shall not have a change in ownership, business name, or permanent mailing address without the permitholder obtaining a new permit. Any permit for such establishment shall lapse automatically upon a change of ownership, business name, or permanent mailing address.

(3) The holder of any weighing and measuring establishment permit shall notify the department in writing at least thirty days prior to any change requiring a new permit under subsection (1) or (2) of this section. A permitholder shall notify the department in writing before there is a change of the name or address of the person authorized to receive notices and orders of the department. When an establishment is to be permanently closed, the permitholder shall return the permit to the department within one week after the closing.

89-187.06. Permit; governmental agencies; exempt. Weighing and measuring devices used by governmental agencies shall be exempt from the requirements of sections 89-187.01 to 89-187.05.

89-187.07. Permitholder; duties; disciplinary actions.

(1) The holder of a permit issued pursuant to the Weights and Measures Act shall comply with the act, the rules and regulations adopted and promulgated pursuant to the act, and any order of the director issued pursuant to the act. The permitholder shall not interfere with the department in the performance of its duties.

(2) A permitholder may be put on probation requiring such person to comply with the conditions set out in an order of probation issued by the director or be ordered to cease and desist pursuant to section 89-196.01 after: (a) The director determines the permitholder has not complied with subsection (1) of this section; (b) the permitholder is given written notice to comply and written notice of the right to a hearing to show cause why the specified order should not be issued; and (c) the director finds that issuing the specified order is appropriate, based on the hearing record or the available information if the hearing is waived by the permitholder.

(3) A permit may be suspended after: (a) The director determines the permitholder has not complied with subsection (1) of this section; (b) the permitholder is given written notice to comply and written notice of the right to a hearing to show cause why the permit should not be suspended; and (c) the director finds that issuing an order suspending the permit is appropriate, based on the hearing record or the available information if the hearing is waived by the permitholder.

(4) A permit may be immediately suspended and the director may order the permitholder's establishment closed prior to hearing when: (a) The director determines an immediate danger to the public health, safety, or welfare exists in the permitholder's establishment; and (b) the permitholder receives written notice to comply and written notice of the right to a hearing to show cause why the suspension should not be sustained. Within fifteen days after the suspension, the permitholder may request in writing a date for a hearing and the director shall consider the interests of the permitholder when the director establishes the date and time of the hearing, except that no hearing shall be held sooner than is reasonable under the circumstances. When a permitholder does not request a hearing date within such fifteen-day period, the director shall establish a hearing date and notify the permitholder of the date and time of such hearing.

(5) A permit may be revoked after: (a) The director determines the permitholder has committed serious, repeated, or multiple violations of any of the requirements of subsection (1) of this section; (b) the permitholder is given written notice to comply and written notice of the right to a hearing to show cause why the permit should not be revoked; and (c) the director finds that issuing an order revoking the permit is appropriate based on the hearing record or on the available information if the hearing is waived by the permitholder.

(6) Any establishment for which the permit has been suspended shall close and remain closed until the permit is reinstated. Any establishment for which the permit has been revoked shall close and remain closed until a new permit has been issued.

(7) The director may terminate proceedings to suspend or revoke a permit or subject a permitholder to an order of the director described in subsection (2) of this section at any time if the reasons for such proceedings no longer exist. A permit which has been suspended may be reinstated, a person with a revoked permit may be issued a new permit, or a permitholder may no longer be subject to such an order

if the director determines that the conditions which prompted the suspension, revocation, or order of the director no longer exist.

(8) Proceedings to suspend or revoke a permit or subject a permit holder to an order of the director described in subsection (2) of this section shall not preclude the department from pursuing other administrative, civil, or criminal actions, such as the stop-use or cease and desist order, an injunction, or a misdemeanor action.

89-187.08. Notice or order; service; contents; hearings.

(1) Any notice or order provided for in the Weights and Measures Act shall be personally served on the permit holder or on the person authorized by the permit holder to receive notices and orders of the department or shall be sent by certified mail, return receipt requested, to the last-known address of the permit holder or the person authorized to receive such notices and orders. A copy of the notice and the order shall be filed in the records of the department.

(2) Any notice to comply provided for in the act shall set forth the acts or omissions with which the permit holder is charged.

(3) A notice of the permit holder's right to a hearing provided for in the act shall set forth the time and place of the hearing except as provided in subsection (4) of section 89-187.07. A notice of the permit holder's right to such hearing shall include notice that a permit holder's right to a hearing may be waived pursuant to subsection (5) of this section. A notice of the permit holder's right to a hearing to show cause why the permit should not be revoked shall include notice to the permit holder that the permit may be revoked or suspended, that the permit holder may be subject to an order of the director described in subsection (2) of section 89-187.07, or that the permit may be suspended and the permit holder subject to such an order if the director determines such action is more appropriate. A notice of the permit holder's right to a hearing to show cause why the permit should not be suspended shall include notice to the permit holder that the permit may be suspended or that the permit holder may also be subject to an order of the director described in subsection (2) of section 89-187.07 if the director determines such action is more appropriate.

(4) The hearings provided for in the act shall be conducted by the director at a time and place he or she designates. The director shall make a final finding based upon the complete hearing record and issue an order. If the director has suspended a permit pursuant to subsection (4) of section 81-187.07, the director shall sustain, modify, or rescind the order. All hearings shall be in accordance with the Administrative Procedure Act.

(5) A permit holder shall be deemed to waive the right to a hearing if such permit holder does not come to the hearing at the time and place set forth in the notice described in subsection (3) of this section without requesting the director at least three business days before the designated time to change the time and place for the hearing, except that before an order of the director becomes final, the director may designate a different time and place for the hearing if the permit holder shows the director that the permit holder had a justifiable reason for not coming to the hearing and not timely requesting a change in the time and place for such hearing. If the permit holder waives the right to a hearing, the director shall make a final finding based upon the available information and issue an order. If the director has

suspended a permit pursuant to subsection (4) of section 89-187.07, the director shall sustain, modify, or rescind the order.

(6) Any person aggrieved by the finding of the director shall have ten days from the entry of the director's order to request a new hearing if such person can show that a mistake of fact has been made which affected the director's determination. Any order of the director shall become final upon the expiration of ten days after its entry if no request for a new hearing is made.

89-188. Director; powers. When necessary for the enforcement of the Weights and Measures Act or the rules and regulations adopted pursuant to the act, the director may:

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

(2) Issue stop-use, hold, and removal orders with respect to any commercial weighing and measuring device and stop-sale, hold, and removal orders with respect to any commodity kept for sale or sold;

(3) Seize, for use as evidence, without formal warrant, any commercial weighing and measuring device which is not correct or is not approved by the department or commodity found to be used, kept for sale, or sold in violation of the provisions of the act or the rules and regulations;

(4) Stop any commercial vehicle from which commodities are kept for sale, sold, or in the process of delivery on the basis of weight, measure, or count and, after presentment of his or her credentials, inspect the contents, require that the person in charge of that vehicle produce any documents in his or her possession concerning the contents, and require him or her to proceed with the vehicle to a specified place for inspection;

(5) Charge and collect all fees and penalties prescribed by the act and the rules or regulations;

(6) Access all books, papers, and other information necessary for the enforcement of the act. If after inspection the director finds or has reason to believe that the requirements set forth in the act are not being met, he or she shall have access to all books, papers, records, bills of lading, invoices, and other pertinent data relating to the use, sale, or representation of any commodity including weighing and measuring devices within this state;

(7) Cooperate with and enter into agreements with any person in order to carry out the purposes of the act;

(8) Inspect weighing and measuring devices which are not required to be registered upon the request of the owner of such devices and seek reimbursement for the actual cost of the inspection;

(9) Establish an authorized laboratory under the National Conference on Weights and Measures, National Type Evaluation Program, and conduct field testing of weighing and measuring devices to determine if such devices meet the requirements in order to issue a Certificate of Conformance. The department shall be reimbursed for the actual cost of such tests by the person seeking such certification; and

(10) Enter into a settlement with any person regarding the disposition of any permit or cease and desist order.

89-192. Commodities; sale; weight, measure, count. Except as otherwise provided by the director, 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, by measure, or by count, so long as the method of sale provides the ability for cost comparison and accurate quantity information.

89-193. Invoice; when required; contents. Whenever the quantity is determined for a commodity sold from bulk, except sales from bulk of less than twenty dollars and sales of motor vehicle fuel of less than one hundred dollars, an invoice shall be prepared by the person physically in control of the quantity determination and shall contain the following information:

- (1) The name and address of the buyer and seller involved in the transaction;
- (2) The date delivered;
- (3) The quantity delivered and the quantity upon which the price is based if different from the delivered quantity;
- (4) The identity in the most descriptive terms commercially practicable, including any quality representation made in connection with the sale; and
- (5) The count of individually wrapped packages, if more than one.

89-194. Package; label; contents. Except as otherwise provided in the Weights and Measures Act or the rules and regulations adopted and promulgated pursuant to the act, any package kept for sale or sold shall bear on the outside of the package a definite, plain, and conspicuous declaration of:

- (1) The identity of the commodity in the package unless the same can easily be identified through the wrapper or container;
- (2) The quantity of contents in terms of weight, measure, or count. When items are combined to form a distinctive product, the quantity representation may be in terms of the total quantity of the combined product and a quantity representation need not be made for each item, except that if the label lists the ingredients they shall be in the order of their predominance by weight; and
- (3) The name and place of business of the manufacturer, packer, or distributor in the case of any package kept for sale or sold in any place other than on the premises where packaged.

89-195. Package; price per pound and total selling price; required. In addition to the declarations required by section 89-194, any package sold at retail being one of a lot containing random weights of the same commodity shall bear on the outside of the package a plain and conspicuous declaration of the price per pound and the total selling price.

89-196. Advertisement with price; declaration of quantity and identity. Whenever a commodity is advertised in any manner with the price stated, there shall be closely and conspicuously associated with the price a declaration of the quantity and the identity of the commodity offered for that price. If a dual declaration is required, only

the declaration that sets forth the quantity in terms of the smaller unit of measurement need appear in the advertisement.

89-196.01. Violations; cease and desist order; enforcement of act.

(1) Whenever the director has reason to believe that any person has violated any provision of the Weights and Measures Act or any rule or regulation adopted and promulgated pursuant to the act, a hearing notice may be issued requiring the person to appear before the director to show cause why an order should not be entered requiring such person to cease and desist from the violation charged. Such hearing notice shall set forth the alleged violation, fix the time and place of the hearing, and specify the action to be considered at such hearing. Hearings shall be conducted as provided for in section 89-187.08. After a hearing, if the director finds such person to be in violation, he or she may enter an order requiring the person to cease and desist from the specific act, practice, or omission.

(2) The director may apply to the county attorney of the county in which the violation occurred or the Attorney General's office to take appropriate action pursuant to sections 89-198 and 89-1,101 without first entering an order as set forth in subsection (1) of this section when there exists an endangerment to the public health, safety, or welfare.

89-197. Unlawful acts. It shall be unlawful for any person to:

(1) Use in commerce any weighing and measuring device which is not correct;

(2) Remove any tag, seal, or mark of a stop-use, stop-sale, hold, or removal order issued by the department from any weighing and measuring device or commodity without specific written authorization from the department;

(3) Fail to report to the department when any tag, seal, or mark of a stop-use, stop-sale, hold, or removal order issued by the department has been removed from any weighing and measuring device or commodity without specific written authorization from the department if such person operates a weighing and measuring establishment and knows or has reason to know the tag, seal, or mark has been removed;

(4) Hinder, obstruct, or refuse to assist the director in the performance of his or her duties;

(5) Maintain or have in his or her possession any commercial weighing and measuring device that has not been registered and inspected in accordance with the provisions of the Weights and Measures Act;

(6) Sell or keep for sale less than the quantity he or she represents of a commodity;

(7) Take more than the quantity he or she represents of a commodity when, as buyer, he or she furnishes the weight or measure by means of which the amount of the commodity is determined;

(8) Operate any weighing and measuring establishment without a valid permit, while the permit is suspended, or after the permit has been revoked if a permit is required by the act;

(9) Determine a gross weight and tare weight to arrive at a net weight by the use in commerce of different weighing and measuring devices that in combination will not meet the absolute value of maintenance tolerance;

(10) Falsify in any manner, by any means, or by or through a representative a recorded representation or documentation from any weighing and measuring device or any representation or delivery ticket of a commodity bought or sold by weight, measure, or count;

(11) Use any commercial weighing and measuring device in a commercial application unless a Certificate of Conformance has been issued for such device unless exempt in section 89-186.01;

(12) Sell any weighing and measuring device for use in a commercial application unless a Certificate of Conformance has been issued for such devices unless exempt in section 89-186.01;

(13) Use, add to, or modify a commercial weighing and measuring device in any way which makes the device not correct unless such change has been authorized by the director as provided for in the act;

(14) Misrepresent the price of any commodity kept for sale or sold by weight, measure, or count or represent the price in any manner calculated or tending to mislead or in any way deceive a person;

(15) Misrepresent the quantity of any commodity kept for sale or sold or represent the quantity in any manner calculated or tending to mislead or in any way deceive a person;

(16) Fail to pay all fees and penalties as prescribed by the act and the rules and regulations adopted and promulgated pursuant to the act;

(17) Refuse to keep and make available for examination by the department all books, papers, and other information necessary for the enforcement of the act; or

(18) Use commercial weighing and measuring devices not in accordance with rules and regulations adopted and promulgated by the director pursuant to subdivision (3)(d) of section 89-187.

89-198. Restraining order or injunction; when. (1) In order to obtain compliance with the Weights and Measures Act, the director may apply for a restraining order, a temporary or permanent injunction, or a mandatory injunction against any person who has violated, is violating, or is threatening to violate the act or the rules and regulations adopted and promulgated pursuant to the act. The district court of the county where the violation has occurred, is occurring, or is about to occur shall have jurisdiction to grant such relief upon good cause shown. Relief may be granted notwithstanding the existence of any other remedy at law and shall be granted without bond.

(2) It shall be the duty of the Attorney General or the county attorney of the county in which any violation of the act or the rules and regulations has occurred, is occurring, or is about to occur, when notified by the director of such violation or threatened violation, to pursue appropriate proceedings without delay pursuant to this section, section 89-1,101, or both. Before the director reports a violation, an opportunity shall be given to such person to present his or her views to the director except when there exists an endangerment to the public health, safety, or welfare.

89-199. Weighing and measuring devices; presumption. Whenever weighing and measuring devices exist 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 weighing and measuring devices are commercial weighing and measuring devices.

89-1,100. Weights and Measures Administrative Fund; created; use; investment; fees, penalties, and other money; lien. The director shall collect registration, permit, laboratory, test, and inspection fees, penalties, and money required to be reimbursed as provided for in the Weights and Measures Act and shall remit such funds to the State Treasurer. The State Treasurer shall credit such funds to the Weights and Measures Administrative Fund, which fund is hereby created. All fees, penalties, and reimbursements collected pursuant to the act and credited to the fund shall be appropriated to the uses of the department to aid in defraying the expenses of administering the act. Any unexpended balance in such fund at the close of any biennium shall, when reappropriated, be available for the uses and purposes of the fund for the succeeding biennium. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. The registration, permit, laboratory, test, and inspection fees, penalties, and money required to be reimbursed as provided for in the Weights and Measures Act shall constitute a lien on the weighing and measuring devices or standards required to be registered or approved for use in this state until such fees, penalties, and reimbursements are paid. The director may sue for such fees, penalties, and reimbursements and may seek to foreclose on any lien in the name of the state. The county attorney of the county in which the device is located or the Attorney General's office shall, upon the request of the director, take appropriate action to establish and foreclose on any such lien.

89-1,101. Violations; penalty. Any person who violates any provision of the Weights and Measures Act or any order of the department after such order has become final or upon termination of any review proceeding, when the order has been sustained by a court of law, shall be guilty of a Class III misdemeanor. Upon a subsequent conviction thereof, he or she shall be guilty of a Class I misdemeanor.

89-1,101.01. Violations; costs of enforcement. All actual costs associated with seizing any weighing and measuring device or commodity which is in violation of the Weights and Measures Act or the rules and regulations adopted and promulgated pursuant to the act, issuing and enforcing any stop-use, hold, or removal order for commercial weighing and measuring devices, issuing and enforcing any stop-sale, hold, or removal order for commodities, and stopping commercial vehicles shall be incurred by the owner of such commodity or weighing and measuring device. The department shall not be liable for any actual or incidental costs incurred by any person due to such departmental actions or in enforcing the act. The department shall be reimbursed by the owner for the actual cost incurred by the department in seizing any weighing and measuring device or commodity, issuing and enforcing any stop-use, hold, or removal order for commercial weighing and measuring devices, issuing and enforcing any stop-sale, hold, or removal order for commodities, and stopping commercial vehicles.

89-1,101.02. Records. Every person who keeps, sells, or uses a commercial weighing and measuring device shall keep and make available for examination by the department for a period of three years at a minimum the following records:

- (1) All invoices generated from a sale from bulk;
- (2) Bills of lading, invoices, or other pertinent data relating to commodities bought or sold; and
- (3) Any other information that would verify accurate quantity determinations by weight, measure, or count.

89-1,102.01. Division of Weights and Measures; established. There is hereby established a Division of Weights and Measures under the control of the department which shall be responsible for the enforcement of the Weights and Measures Act.

89-1,103. Act, how construed. The Weights and Measures Act shall be so interpreted and construed as to effectuate the general purpose to make uniform the law of those states which have enacted corresponding provisions.

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