WEST VIRGINIA CODE: §47-1-22

§47-1-22. Civil penalties.

(a) No person may:

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

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

(3) Remove any tag, seal, or mark from any weight or measure, without specific authorization from the Weights and Measures Section; or

(4) Violate any provisions of this article or rules promulgated under it, not defined in §47-1-23(a) of this code.

(b) Any person who violates subsection (a) of this section or any rule promulgated by the commissioner may be assessed a civil penalty by the commissioner, which penalty may not be more than $1,000 for each violation. Each violation shall constitute a separate offense. In determining the amount of the penalty, the commissioner shall consider the person's history of previous violations, the appropriateness of such penalty to the size of the business of the person charged, the gravity of the violation and the demonstrated good faith of the person charged in attempting to achieve rapid compliance after notification of a violation.

(c) All civil penalties paid pursuant to this section shall be paid to the Commissioner of Labor and deposited in the Weights and Measures Fund for use by the commissioner for the implementation and enforcement of this article. Through June 30, 2019, amounts collected which are found from time to time to exceed funds needed for the purposes set forth in this article may be utilized by the commissioner as needed to meet the division's funding obligations: Provided, That beginning July 1, 2019, amounts collected may not be utilized by the commissioner as needed to meet the division's funding obligations.

(d) A civil penalty may be assessed by the commissioner only after the commissioner has given at least ten days' notice to the person. Notice shall be in writing, shall contain a short, plain statement of the matter asserted and shall designate a time and place for a hearing where the person may show cause why the civil penalty should not be imposed. Notice of hearing shall be sent by certified mail. The person may, at the time designated for the hearing, produce evidence on his or her behalf and be represented by counsel.

(e) Any person aggrieved by a decision of the commissioner has the right to a contested case hearing under §29A-5-1 et seq. of this code.

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