WEST VIRGINIA CODE: §47-1-3

§47-1-3. Commissioner of labor to be commissioner of weights and measures; powers and duties; appointment of deputies and inspectors.

The state commissioner of labor is the commissioner of weights and measures. He may appoint such deputies and inspectors as may be required to carry out the provisions and purposes of this article within the limits of such appropriation as may be made by the Legislature for the maintenance of the work of the Division of Labor.

The commissioner shall:

(a) Maintain traceability of the primary standards to the national standards in the possession of the national institute of standards and technology;

(b) Enforce the provisions of this article;

(c) Promulgate rules for the enforcement of this article, which rules shall have the force and effect of law;

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

(e) Grant any exemptions from the provisions of this article or any rule promulgated pursuant thereto when appropriate to the maintenance of good consumer practices within the state;

(f) Conduct investigations to ensure compliance with this article;

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

(h) Test annually the standards of weights and measures used within the state, and approve the same when found to be correct;

(i) Inspect and test weights and measures kept, offered or exposed for sale;

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

(1) 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

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

(k) 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;

(l) Approve for use, and shall mark, such weights and measures as are found to be correct, and shall reject and mark as rejected such weights and measures as are found 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 commissioner shall condemn and may seize and destroy the weights and measures found to be incorrect that are not capable of being made correct;

(m) 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 article or rules promulgated pursuant thereto. In carrying out the provisions of this article, the commissioner shall employ recognized sampling procedures, such as are designated in national institute of standards and technology handbook 133, "Checking the Net Contents of Packaged Goods";

(n) Prescribe, by rule, the appropriate term or unit of weight or measure to be used, whenever the commissioner determines that an existing practice of declaring the quantity of a commodity or setting charges for a service by weight, measure, numeric count, time or combination thereof, does not facilitate value comparisons by consumers, or offers an opportunity for consumer confusion;

(o) 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;

(p) Provide for the training of weights and measures personnel, and may also establish minimum training and performance requirements which shall then be met by all weights and measures personnel, whether county, municipal or state. The commissioner may adopt the training standards of the national conference on weights and measures national training program; and

(q) From time to time, randomly inspect and test the quality of motor fuels offered or exposed for sale in the state, to determine compliance with the provisions of this article. He shall also, as budget levels provide, act on complaints from consumers in this state where fuel quality is in question.

When necessary for the enforcement of this article or rules promulgated pursuant thereto, the commissioner is:

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(1) Authorized to enter any commercial premises during normal business hours, without formal warrant, for the purpose of enforcement of this article;

(2) 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) 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 the provisions of this article or rules promulgated pursuant thereto;

(4) Empowered to stop any commercial vehicle and, after presentation 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 or her to proceed with the vehicle to some specified place for inspection; and

(5) With respect to the enforcement of this article, the commissioner is hereby vested with special police powers, and is authorized to arrest, without formal warrant, any violator of this article.

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