WEST VIRGINIA CODE CHAPTER 47 ARTICLE 1

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§47-1-1. Definitions.

(a) "Commercial business" means any business, which in the course of normal operation, offers or exposes goods or services for sale, for the purpose of financial or monetary gain.

(b) "Commercial location" means a physical location or address where businesses conduct commercial transactions. Each physical address or location constitutes a separate "commercial location".

(c) "Commercial transaction" means the buying or selling of goods or services.

(d) "Weight(s)" and/or "measure(s)" 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.

(e) "Weight" as used in connection with any commodity or service means net weight. When a commodity is sold by drained weight, the term means net drained weight.

(f) "Correct" as used in connection with weights and measures means conformance to all applicable requirements of this article.

(g) "Primary standards" means the physical standards of the state that serve as the legal reference from which all other standards and weights and measures are derived.

(h) "Secondary standards" means the physical standards that are traceable to the primary standards through comparisons, using acceptable laboratory procedures, and used in the enforcement of weights and measures laws and regulations.

(i) "Commissioner" means the commissioner of the West Virginia Division of Labor.

(j) "Person" means both plural and the singular, as the case demands, and includes individuals, partnerships, corporations, companies, societies, associations and government entities.

(k) "Sale from bulk" means the sale of commodities when the quantity is determined at the time of sale.

(l) "Package", whether standard package or random package, means any commodity:

(1) Enclosed in a container or wrapped in any manner in advance of wholesale or retail sale; or

(2) Whose weight or measure has been determined in advance of wholesale or retail sale.

An individual item or lot of any commodity on which there is marked a selling price based on an established price per unit of weight or measure shall be considered a package (or

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packages).

(m) "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, but are not limited to, containers, conveyances, bags, wrappers, packaging materials, labels, individual piece coverings, decorative accompaniments and coupons, except that, depending on the type of service rendered, packaging materials may be considered to be part of the service. For example, the service of shipping includes the weight of packing materials.

(n) "Random weight package" means a package that is one of a lot, shipment or delivery of packages of the same commodity with no fixed pattern of weights.

(o) "Standard package" means a package that is one of a lot, shipment or delivery of packages of the same commodity with identical net contents declarations. For example, one liter bottles of carbonated soda, five pound bags of sugar or 9.4 ounce packages of luncheon meat.

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§47-1-2. State 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 institute of standards and technology, shall be the state primary standards of weights and measures, and shall be maintained in such calibration as prescribed by the national institute of standards and technology. All secondary standards may be prescribed by the commissioner and shall be verified upon their initial receipt, and as often thereafter as deemed necessary by the commissioner.

In addition to the state primary standards of weights and measures provided in this article, there shall be supplied by the state at least one complete set of copies of these standards, to be known as secondary standards; and such other weights, measures and apparatus as may be found necessary to carry out the provisions of this article, to be known as working standards. Such weights, measures and apparatus shall be verified by the commissioner, or at his discretion by his deputy or inspectors, upon the initial receipt of such weights, measures and apparatus and at least once in each year thereafter, the secondary standards by direct comparison with the primary standards, the working standards by comparison with the secondary standards. When found accurate upon these tests of secondary and working standards, the standards shall be marked as correct. The secondary standards shall be used in making all comparisons of weights, measures and weighing and measuring devices submitted for test in the office of the commissioner, and the primary standards shall be used only in verifying the primary standards and for scientific purposes.

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§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

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

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(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:

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

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(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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§47-1-4. Systems of weights and measures; technical requirements for weighing and measuring devices.

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 and measure, and weights and measures equivalents as published by the national institute of standards and technology are recognized and shall govern weighing and measuring equipment and transactions in the state.

The specifications, tolerances and other technical requirements for commercial, law enforcement, data gathering and other weighing and measuring devices as adopted by the national conference on weights and measures and published in national institute of standards and technology handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices" and supplements thereto or revisions thereof, shall apply to weighing and measuring devices in the state, except insofar as modified or rejected by legislative rule.

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§47-1-5. Requirements for packaging and labeling.

The uniform packaging and labeling regulation as adopted by the national conference on weights and measures and published in the national institute of standards and technology handbook 130, "Uniform Laws and Regulations" and supplements thereto or revisions thereof, shall apply to packaging and labeling in the state, except insofar as modified or rejected by legislative rule.

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§47-1-6. Requirements for the method of sale of commodities.

The uniform regulation for the method of sale of commodities as adopted by the national conference on weights and measures and published in the national institute of standards and technology handbook 130, "Uniform Laws and Regulations" and supplements thereto and revisions thereof, shall apply to the method of sale of commodities in the state, except insofar as modified or rejected by legislative rule.

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§47-1-7. Requirements for unit pricing.

The uniform unit pricing regulation as adopted by the national conference on weights and measures and published in national institute of standards and technology handbook 130, "Uniform Laws and Regulations" and supplements thereto and revisions thereof, shall apply to unit pricing in the state, except insofar as modified or rejected by legislative rule.

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§47-1-8. Requirements for the registration of service persons and service agencies for commercial weighing and measuring devices.

(a) The uniform regulation for the voluntary registration of service persons and service agencies for commercial weighing and measuring devices as adopted by The National Conference of Weights and Measures and published in the National Institute of Standards and Technology Handbook 130, Uniform Laws and Regulations and supplements thereto or revisions thereof, shall apply to the registration of service persons and service agencies in the state, except insofar as modified or rejected by legislative rule.

(b) Beginning January 1, 2018, the commissioner shall charge an annual registration fee for service persons and service agencies to be established by legislative rule: Provided, That upon the effective date of the amendments to this section adopted in the 2018 Regular Session of the Legislature, the division may not charge an annual registration fee.

(c) All fees 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.

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§47-1-9. Requirements for open dating.

The uniform open dating regulation as adopted by the national conference on weights and measures and published in national institute of standards and technology handbook 130, "Uniform Laws and Regulations" and supplements thereto and revisions thereof, shall apply to open dating in the state, except insofar as modified or rejected by legislative rule.

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§47-1-10. Requirements for type evaluation.

The uniform regulation for national type evaluation as adopted by the national conference on weights and measures and published in national institute of standards and technology handbook 130, "Uniform Laws and Regulations" and supplements thereto and revisions thereof, shall apply to type evaluation in the state, except insofar as modified or rejected by legislative rule.

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§47-1-11. Requirements for motor fuel.

The uniform regulation for motor fuel as adopted by the national conference on weights and measures and published in national institute of standards and technology handbook 130, "Uniform Laws and Regulations" and supplements thereto and revisions thereof, shall apply to motor fuel quality in the state, except insofar as modified or rejected by legislative rule.

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§47-1-12. Misrepresentation of quantity.

No person may:

(a) Sell, offer or expose for sale less than the quantity represented; nor

(b) Take more than the represented quantity when, as buyer, he furnishes the weight or measure by means of which the quantity is determined; nor

(c) Represent the quantity in any manner calculated or tending to mislead or in any way deceive another person.

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§47-1-13. Misrepresentation of pricing.

No person may 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.

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§47-1-14. Method of sale.

Except as otherwise provided by the commissioner or by firmly established trade custom and practice:

(a) Commodities in liquid form shall be sold by liquid measure or by weight; and

(b) Commodities not in liquid form shall be sold by weight, by measure or by count.

The method of sale shall provide accurate and adequate quantity information that permits the buyer to make price and quantity comparisons.

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§47-1-15. Sale from bulk.

All bulk sales in which the buyer and seller are not both present to witness the measurement, all bulk deliveries of heating fuel and all other bulk sales specified by rule of the commissioner, shall be accompanied by a delivery ticket containing the following information:

(a) The name and address of the buyer and seller;

(b) The date delivered;

(c) The quantity delivered and the quantity upon which the price is based, if this differs from the delivered quantity, for example, when temperature compensated sales are made;

(d) The unit price, unless otherwise agreed upon by both buyer and seller;

(e) The identity in the most descriptive terms commercially practicable, including any quality representation made in connection with the sale; and

(f) The count of individually wrapped packages, if more than one, in the instance of commodities bought from bulk but delivered in packages.

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§47-1-16. Information required on packages.

Except as otherwise provided in this article or by rule promulgated pursuant thereto, any package whether a random package or a standard 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:

(a) The identity of the commodity in the package, unless the same can easily be identified through the wrapper or container;

(b) The quantity of contents in terms of weight, measure or count; and

(c) 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.

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§47-1-17. Declarations of unit price on random weight packages.

In addition to the declarations required by section fifteen of this article, any package being one of a lot containing random weights of the same commodity, at the time it is offered or exposed for sale at retail, shall bear on the outside of the package a plain and conspicuous declaration of the price per kilogram or pound and the total selling price of the package.

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§47-1-18. 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 rule 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.

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§47-1-19. State weights and measures division.

There shall be a state division of weights and measures located for administrative purposes within the Division of Labor. The division is charged with, but not limited to, performing the following functions on behalf of the citizens of the state:

(a) Assuring that weights and measures in commercial service with the state are suitable for their intended use, properly installed and accurate and are so maintained by their owner or user;

(b) Preventing unfair or deceptive dealing by weight or measure in any commodity or service advertised, packaged, sold or purchased within the state;

(c) Making available to all users of physical standards or weighing and measuring equipment who are registered under the provisions of section twenty-one of this article, the precision calibration and related metrological certification capabilities of the weights and measures facilities of the division;

(d) Promoting uniformity, to the extent practicable and desirable, between weights and measures requirements of the state and those of other states and federal agencies;

(e) Encouraging desirable economic growth while protecting the consumer through the adoption by rule of weights and measures requirements as necessary to assure equity among buyers and sellers.

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§47-1-20. State measurement laboratory.

(a) The commissioner shall operate and maintain a state measurement laboratory certified and approved by the National Institute of Standards and Technology. The laboratory shall be used to both house and maintain the state primary standards and secondary standards as traceable to the national standards and to test or calibrate any secondary or working standards which are submitted for test as required by this article.

(b) The commissioner shall promulgate rules, pursuant to §29A-1-1 et seq. of this code to assess fees for weights and measures, laboratory calibration, and testing. All fees paid pursuant to this section shall be paid to the Commissioner of Labor and deposited into an appropriated special revenue account in the State Treasury to be known as the Weights and Measures Fund and expended for the implementation and enforcement of this article. Through June 30, 2019, amounts collected which are found from time to time to exceed the 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.

(c) The commissioner shall provide such personnel as required to operate the laboratory in a manner which is consistent with the needs of this article. Personnel shall be trained and certified to perform all such calibrations and tests as required by the National Institute of Standards and Technology to maintain traceability of the state standards to national standards, and to properly maintain the laboratory facility as certified and traceable to the National Institute of Standards and Technology.

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§47-1-21. Registration of business.

(a) On or before October 1, 1994, every commercial business in the state which, in the course of conducting business, utilizes weights, measures, and weighing and measuring devices covered by this article shall obtain a certificate of device registration for the commercial devices covered by this article, from the division. After October 1, 1994, it shall be unlawful in the state to conduct business subject to the provisions of this article without having first obtained a certificate of device registration from the division. Application for a certificate of device registration shall be made on a form provided by the division.

(b) A certificate of device registration is valid for 12 months from the date of issue. The certificate of device registration shall be posted within the place of business.

(c) Application for the renewal of a certificate of device registration shall be made on a form provided by the division at least 30 days prior to the renewal due date. The commissioner may deny the renewal of device registration for cause where the cause is the result of the conviction of the applicant, in a court of competent jurisdiction, for a violation of this article.

(d) Beginning January 1, 2018, the division shall charge an annual device registration fee, to be established by legislative rule: Provided, That upon the effective date of the amendments to this section adopted in the 2018 Regular Session of the Legislature, the division may not charge an annual device registration fee.

(e) All fees 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.

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§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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§47-1-23. Criminal penalties.

(a) No person shall:

(1) Hinder or obstruct any weights and measures official in the performance of his duties;

(2) Impersonate in any way the commissioner, his assistants, deputies or inspectors;

(3) Use in commerce any weight or measure which has not been inspected and approved by the commissioner of weights and measures of his or her authorized inspectors or deputies; or

(4) Use or have in his or her possession for the purpose of selling or using any device or instrument to be used to or calculated to falsify any weight or measure.

(b) Any person who, by himself or herself or by his or her servant or agent, or as the servant or agent of another person, knowingly violates subsection (a) of this section, is guilty of a misdemeanor, and, upon a first conviction, shall be fined not more than $100, or imprisoned for not more than ninety days, or both fined and imprisoned; and upon a second or subsequent conviction, he or she shall be fined not less than one hundred nor more than $1,000, or imprisoned for not more than six months, or both fined and imprisoned.

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