

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1953

ENROLLED

SENATE BILL NO. 89

(By Mr. Lovel)

PASSED February 28 1953

In Effect ninety days from Passage

FILED IN THE OFFICE OF THE SECRETARY OF STATE
OF WEST VIRGINIA

MAR 5 1953

D. PITT O'BRIEN,

SECRETARY OF STATE

ENROLLED

Senate Bill No. 89

(By MR. LOVE)

[Passed February 28, 1953; in effect ninety days from passage.]

AN ACT to amend and reenact sections twenty-six, twenty-nine and thirty-six, article one, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the size and capacity of bottles and containers used for the retail sale of milk and cream, the weight of a barrel of flour and fixing of offenses and penalties under the weights and measures law.

Be it enacted by the Legislature of West Virginia:

That sections twenty-six, twenty-nine and thirty-six, article one, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one be amended and reenacted to read as follows:

Section 26. *Bottles and Containers For Milk And*

2 *Cream.*—Bottles and containers used for the retail sale
3 of milk or cream shall be of the capacity of one gallon,
4 one-half gallon, three pints, one quart, one pint, one-half
5 pint, and one gill, when filled within one-fourth of an
6 inch of the cap seat or stopple. The following variations
7 on individual bottles, containers, or jars may be allowed,
8 but the average contents of not less than twenty-five bot-
9 tles, containers, or jars selected at random from at least
10 four times the number tested must not be in error more
11 than one quarter of these tolerances: Ten drams above
12 and ten drams below on the gallon; six drams above and
13 six drams below on the half gallon; five drams above and
14 five drams below on three pints; four drams above and
15 four drams below on the quart; three drams above and
16 three drams below on the pint; two drams above and two
17 drams below on the gill. Bottles, containers, or jars used
18 for the sale of milk or cream shall have clearly blown,
19 or otherwise permanently marked, in the side of the bot-
20 tle, container or jar, the capacity of the bottle and the
21 word "sealed"; and in the side or bottom of the bottle,

22 container or jar, the name, initial, or trade-mark, which
23 designating number shall be different for each manufac-
24 turer and may be used in identifying the bottles. The
25 designating number shall be furnished by the state com-
26 missioner of weights and measures upon application by
27 the manufacturer, and upon the filing by the manufactur-
28 er, of a bond in the sum of one thousand dollars, with
29 sureties to be approved by the attorney general, condi-
30 tioned upon his conformance with the requirements of
31 this section. A record of the bonds furnished, and the
32 designating numbers and to whom furnished, shall be
33 kept in the office of the commissioner of weights and
34 measures.

35 Any manufacturer who sells or offers to sell milk or
36 cream bottles, containers, or jars, to be used in this state
37 that do not comply as to size and markings with the pro-
38 visions of this section shall suffer a penalty of five hun-
39 dred dollars, to be recovered by the attorney general in
40 an action against the offender's bondsman to be brought
41 in the name of the state of West Virginia. Any dealer
42 who uses, for the purpose of selling milk or cream jars,

43 bottles or containers that do not comply with the require-
44 ments of this section as to marking and capacity shall be
45 deemed guilty of using a false and insufficient measure.
46 Sealers of weights and measures are not required to
47 seal bottles, jars, or containers for milk or cream marked
48 as in this section provided, but they shall have the power
49 to, and shall from time to time, make tests on individual
50 bottles, containers or jars, used by various dealers in the
51 territory over which they have jurisdiction in order to
52 ascertain if the above provisions are being complied with,
53 and they shall immediately report violations found to the
54 state commissioner of weights and measures.

Sec. 29. *Barrel of Flour.*—One barrel of flour shall con-
2 tain two hundred pounds, one-half barrel, one hundred
3 pounds, one-quarter barrel, fifty pounds and one-eighth
4 barrel twenty-five pounds, net weight.

Sec. 36. *Offenses; Penalties.*—Any person who, by him-
2 self or by his servant or agent, or as the servant or agent
3 of another person, shall knowingly offer or expose for
4 sale, sell, use in the buying or selling of any commodity
5 or thing or for hire or reward, or retain in his possession,

6 a false weight or measure, or weighing or measuring de-
7 vice which has not been sealed by a sealer or deputy seal-
8 er of weights and measures, or shall dispose of any meas-
9 ure or weighing or measuring device contrary to law,
10 or remove any tag placed thereon by a sealer or deputy
11 sealer of weights and measures, shall be guilty of a mis-
12 demeanor, and upon a first conviction, shall be fined not
13 less than ten nor more than one hundred dollars, or im-
14 prisoned for not more than sixty days, or both fined and
15 imprisoned; and upon a second or subsequent conviction,
16 he shall be fined not less than ten nor more than five hun-
17 dred dollars, or imprisoned in the county jail for not more
18 than sixty days, or both fined and imprisoned.

19 Any person who, by himself or by his servant or agent,
20 or as the servant or agent of another person, who shall
21 sell or offer or expose for sale less than the quantity he
22 represents, or shall take or attempt to take more than the
23 quantity he represents, when, as the buyer, he furnishes
24 the weights, measures, or weighing device by means of
25 which the amount of commodity is determined; or who
26 shall keep for the purpose of sale, offer or expose for sale,

27 or sell any commodity in a manner contrary to law; or
28 who shall sell or offer for sale, or use or have in his pos-
29 session for the purpose of selling or using, any device or
30 instrument to be used to or calculated to falsify any
31 weights or measures; or who shall violate any provision
32 of this article for which a specific penalty has not been
33 provided, shall be guilty of a misdemeanor, and, upon a
34 first conviction, shall be fined not less than ten nor more
35 than one hundred dollars, or imprisoned for not more
36 than sixty days, or both fined and imprisoned for not
37 more than sixty days; and upon a second or subsequent
38 conviction, he shall be fined not less than ten nor more
39 than five hundred dollars, or imprisoned in the county
40 jail for not more than sixty days, or both fined and im-
41 prisoned.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Sam Kinley
Chairman Senate Committee

H. Mueller
Chairman House Committee

Originated in the Senate.

Takes effect *ninety days from* passage.

Howard Meyer
Clerk of the Senate

Philip
Clerk of the House of Delegates

Capth Bean
President of the Senate

W. E. La
Speaker House of Delegates

The within *approved* this the *5th*

day of *March*, 1953.

William C. Inarland
Governor.