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IC 24-6-3

Chapter 3. State and Local Weights and Measures Program

IC 24-6-3-1

Weights and measures furnished by United States government

Sec. 1. The:

(1) standard weights and measures furnished by the government of the United States and certified by the National Institute of Standards and Technology; and

(2) weights, measures, balances, and apparatus as may be added by the division of weights and measures and verified by the National Institute of Standards and Technology;

are the standards by which all state, county, and city standards shall be tried, proved, and sealed.

(Formerly: Acts 1925, c.86, s.1.) As amended by P.L.3-1989, SEC.142; P.L.2-1992, SEC.749.

IC 24-6-3-2

Division of weights and measures; powers and duties

Sec. 2. (a) The division of weights and measures shall take charge of the standards adopted by this chapter as the standards of the state, cause them to be kept in a fireproof building belonging to the state, and from which they shall not be removed except for repairs or for certification, and take all other necessary precautions for their safekeeping.

(b) The division shall maintain the state standards in good order and shall submit them once in ten (10) years to the National Institute of Standards and Technology for certification. The division or inspectors at the division's direction, shall correct the standards of the several cities and counties, and as often as once in two (2) years compare the same with those in the division's possession, and where not otherwise provided by law the division shall have the general supervision of the weights, measures, and measuring and weighing devices in use in Indiana.

(c) The division of weights and measures is also authorized to adopt rules, specifications, and tolerances necessary for the enforcement of this chapter. The division shall, upon the written request of any Indiana citizen, firm, corporation, limited liability company, or institution, test or calibrate weights, measures, weighing, or measuring devices and instruments or apparatus used as standards in Indiana. The division or inspectors at the division's direction, shall at least once annually test all scales, weights, and measures and devices used in checking the receipt or disbursement of supplies in every institution under the jurisdiction of the department of child services and the division shall report in writing the findings to the executive officer of the institution concerned.

(d) The division of weights and measures shall keep a complete record of the standards, balances, and other apparatus belonging to the state and take a receipt for the same from the successor in office to the head of the division.

(e) The division or inspectors at the division's direction, shall at least once in two (2) years visit the various cities and counties in Indiana that have appointed sealers of weights and measures in order to inspect the work of the local sealers. In the performance of such duties, the division may inspect the weights, measures, balances, or any other weighing or measuring appliances of any person.

(f) The division of weights and measures shall issue from time to time rules for the guidance of state, county, and city sealers or inspectors. The rules shall govern the procedure to be followed by those officers in the discharge of their duties.

(Formerly: Acts 1925, c.86, s.2.) As amended by Acts 1978, P.L.2, SEC.2418; Acts 1979, P.L.17, SEC.38; Acts 1981, P.L.33, SEC.29; P.L.3-1989, SEC.143; P.L.2-1992, SEC.750; P.L.8-1993, SEC.365; P.L.145-2006, SEC.156.

IC 24-6-3-3

County inspectors; appointment; compensation

Sec. 3. The board of commissioners of every county of thirty thousand (30,000) population or more shall, and the board of commissioners of any county of less than thirty thousand (30,000) population may appoint a county inspector of weights and measures. No person shall be appointed as a county inspector of weights and measures in any county unless such person shall have been approved by the division of weights and measures of the state department of health, and no county inspector of weights and measures in any county shall be removed by the board of commissioners without the approval and consent of the division of weights and measures. The compensation of a county inspector of weights and measures shall be determined by the board and paid out of the county treasury. It shall not be obligatory upon the board of county commissioners of such counties containing a city or cities which are already provided with an inspector of weights and measures or city sealers to make such appointments. The board shall provide the necessary apparatus and supplies for the said inspector of weights and measures and the county councils of such counties shall appropriate such sums of money as are necessary for the salary and maintenance of the office. Two (2) or more adjoining counties, by appropriate action of the boards of commissioners of such counties, may form an inspection district and provide by mutual agreement for the appointment of a district inspector of weights and measures. The compensation of such inspector shall be apportioned among the counties forming the district in proportion to the population thereof.

(Formerly: Acts 1925, c.86, s.3; Acts 1955, c.229, s.1.) As amended by P.L.152-1986, SEC.85; P.L.2-1992, SEC.751.

IC 24-6-3-4

City inspectors; appointment, service and removal

Sec. 4. (a) The legislative body of a city having a population of at least twenty thousand (20,000) may provide for the appointment by the board of public safety of an inspector of weights and measures

and provide for the inspector's compensation and for the necessary apparatus and expenses to be paid out of the city treasury. The inspector of weights and measures shall serve continuously during good behavior under the provisions of IC 36-8-3-4 governing the fire and police force. The inspector of weights and measures shall not be removed for any political reason and only for good and sufficient cause after an opportunity for hearing is given by the board of public safety. However, this subsection does not affect the power of the division of weights and measures of the state department of health to discharge county or city inspectors of weights and measures under section 6 of this chapter.

(b) A person may not be appointed as a city inspector of weights and measures unless the person is approved by the division of weights and measures. A city inspector of weights and measures may not be removed without the approval and consent of the division of weights and measures.

(c) The same person may be employed as a city and county inspector of weights and measures. If the same person is so employed, the compensation and expenses of the inspector shall be divided between the city and county, as agreed upon under IC 36-1-7.

(d) If a city having a population of at least twenty thousand (20,000) does not provide for the

appointment of an inspector of weights and measures, the executive of the county containing the city shall require the county inspector of weights and measures to perform those duties for that city.
(Formerly: Acts 1925, c.86, s.4.) As amended by Acts 1981, P.L.44, SEC.29; P.L.40-1989, SEC.41; P.L.2-1992, SEC.752.

IC 24-6-3-5

Powers and duties of county and city inspectors

Sec. 5. The county or city inspector of weights and measures when appointed shall be a deputy inspector under the direction of the division of weights and measures. The inspector shall take charge of and safely keep the county or city standards. When not otherwise provided by law, the county or city inspector of weights and measures shall have the power within the county or city to inspect, test, try and ascertain if they are correct, all weights, scales, beams, measures of every kind, instruments or mechanical devices for measurement and the tools, appliances or accessories, connected with any or all such instruments or measurements used or employed within the county or city by any proprietor, agent, lessee or employee in determining the size, quantity, extent or measurement of quantities, things, produce, articles for distribution or consumption offered or submitted by such person or persons for sale, for hire or award. The inspector shall at least once in each year and as much oftener as he may deem necessary see that the weights, measures and all apparatus used in the county or city are correct. The county or city inspector of weights and measures shall keep a complete record of the work done by the inspector and shall make a monthly and annual report to the division and the board of county commissioners or to

the mayor. The annual report shall be duly sworn and submitted to the division of weights and measures, not later than the fifteenth of October. Upon appointment, the county or city inspector of weights and measures shall, in the manner prescribed by IC 5-4-1, give a bond for the faithful performance of the duties of the office. The county inspector of weights and measures shall have jurisdiction over the whole county except as to incorporated cities which have provided for a city inspector of weights and measures under the provisions of this chapter.

(Formerly: Acts 1925, c.86, s.5.) As amended by Acts 1981, P.L.47, SEC.19; P.L.2-1992, SEC.753.

IC 24-6-3-6

Qualifications of inspectors; discharge and removal

Sec. 6. Only those persons shall be eligible to appointment to the position of county or city inspectors of weights and measures who on March 9, 1925, are county or city sealers or inspectors of weights and measures or who have passed an examination which shall be given by the division of weights and measures of the state department of health to test the ability of the person so examined to perform satisfactorily the duties of a county or city inspector of weights and measures. If it is evident to the division of weights and measures that any county or city inspector of weights and measures is not properly and faithfully performing the duties of the office, the division of weights and measures shall have power to discharge such county or city inspector of weights and measures. Such removal, however, shall not be made until five (5) days' notice of the charge or charges shall have been mailed to him by the division, naming a time and place for a hearing not less than two (2) weeks later than the time of mailing such notice to the county or city inspector of weights and measures; provided, however, that any county or city inspector of weights and measures so removed by the division of weights and measures shall have the right to appeal from the action of the division to the circuit or superior court of the county in which such county or city inspector of weights and measures resides, and during the pendency of such appeal, such county or city inspector of weights and measures may serve in the inspector's official capacity. Any county or city inspector of weights and measures discharged as provided in this section

shall be ineligible to hold the position of county or city inspector of weights and measures for four (4) years, and the vacancy shall be filled by the proper authorities as provided in this chapter.

(Formerly: Acts 1925, c.86, s.6.) As amended by P.L.152-1986, SEC.86; P.L.2-1992, SEC.754.

IC 24-6-3-7

Inspection of devices; confirmation to legal standards; tagging nonconforming devices

Sec. 7. Whenever the inspector of the city or county or the division of weights and measures, or the division's inspectors test and

compare scales, weights, measures, or weighing or measuring devices and finds that they correspond with the standards in the inspector's possession, the inspector shall seal and mark such scales, weights, measures, or weighing and measuring devices by stamping upon them the letters "Ind. S.," meaning Indiana Standard, and the last two (2) figures of the year in which the same is done. If any scales, weights, measures, or weighing or measuring devices, or parts thereof, be found not to conform to the legal standard the same may be tagged by the inspector "condemned until repaired" which tag shall not be removed until said apparatus is properly repaired. If the scales, weights, measures, or weighing or measuring devices, or parts thereof are found to be false and fraudulent, or can not be made to conform to the legal standard, the same shall be condemned and confiscated by the inspector.

(Formerly: Acts 1925, c.86, s.7.) As amended by P.L.2-1992, SEC.755; P.L.1-1993, SEC.196.

IC 24-6-3-8

Seizure of nonconforming devices

Sec. 8. The division of weights and measures, the division's deputies and inspectors, and the county and city inspectors of weights and measures are hereby made special policemen and are authorized and empowered to arrest without formal warrant for any violation of the statutes in relation to scales, weights and measures, and to seize and use for evidence and without formal warrant any false weight, scales, measure, or weighing or measuring device, or packages or amounts of commodities found to be used, retained or offered or exposed for sale or sold in violation of law.

(Formerly: Acts 1925, c.86, s.8.) As amended by P.L.2-1992, SEC.756.

IC 24-6-3-9

Entry without warrant; prosecution; hindrance of inspector

Sec. 9. (a) The division of weights and measures, the division's agents, deputies, or inspectors, and the county and city inspectors of weights and measures may go into or upon without formal warrant any stand, place, building or premises, or may stop any vender, peddler, junk dealer, coal wagon, ice wagon, or any dealer, for the purpose of making the proper test and for the purpose of ascertaining the proper weights and measures of all commodities found therein or thereon. Whenever the division, the division's agents, deputies, or inspectors, or the county and city inspectors of weights and measures find a violation of law relating to weights and measures, the individual shall cause the violator to be prosecuted.

(b) No person may molest, hinder or obstruct in any way the division of weights and measures, the division's agents, deputies, or inspectors, or any county or city inspector of weights and measures in the performance of official duties.

(Formerly: Acts 1925, c.86, s.9.) As amended by Acts 1978, P.L.2, SEC.2419; P.L.2-1992, SEC.757.

IC 24-6-3-10

Commodity sold by numerical count; weight per ton

Sec. 10. All commodities shall be sold by standard weight or measure except as otherwise provided in this chapter; provided, however, that the provisions of this section shall not apply to commodities which are usually and customarily sold by numerical count, or in gross, or are sold in packages prepared and put up for sale; provided, that all commodities packed in such packages shall be so marked as to plainly indicate the net contents in terms of weight, measure, or numerical count; provided, also, that two thousand (2,000) pounds net avoirdupois shall constitute a ton.

(Formerly: Acts 1925, c.86, s.10.) As amended by P.L.152-1986, SEC.87.

IC 24-6-3-10.5

Items that may be sold as unweighed, uncounted units

Sec. 10.5. Notwithstanding any other provision, a packaged decorative fruit basket or a delicatessen tray or platter containing meat or cheese may be sold or offered for sale by weight, by numerical count, or as an unweighed, uncounted unit for sale.

As added by P.L.80-1999, SEC.4.

IC 24-6-3-11

Use or retention of false scales; removal of tag

Sec. 11. No person, firm, limited liability company, or corporation shall use or retain in the person's, firm's, company's, or corporation's possession any false scales, weights, or measures or measuring device or any weight or measure or weighing or measuring device in the buying or selling of any commodity or thing or in calculating or measuring service, or dispose of any condemned scales, weights, measures, or weighing or measuring device, except in accordance with such rules, specifications, and tolerances as may be adopted by the division of weights and measures of the state department of health as provided in section 2 of this chapter, or remove any tag, stamp, or mark placed thereon by the inspector; and no person, firm, limited liability company, or corporation shall sell or offer or expose for sale or deliver less than the quantity the person, firm, limited liability company, or corporation represents, or sell, offer for sale, or have in the person's, firm's, limited liability company's, or corporation's possession for the purpose of selling any false scales, weight, or measure, or any device or instrument to be used or calculated to falsify any weight or measure.

(Formerly: Acts 1925, c.86, s.11.) As amended by P.L.152-1986, SEC.88; P.L.2-1992, SEC.758; P.L.8-1993, SEC.366.

IC 24-6-3-12

Dry capacity measure; sale of fruits and vegetables; commodities; original standard container; definitions

Sec. 12. (a) All commodities shall be offered for sale or sold upon the basis of avoirdupois net weight or by numerical count only, and

it shall be unlawful for anyone to use or employ any dry capacity measure, basket, barrel, or container of any kind as a means of determining the amounts or quantities of any commodities offered for sale or sold; provided, however, that the provisions of this chapter shall not be construed to apply to fruits and vegetables sold in the original standard container, nor to vegetables which by common custom are offered for sale or sold by the bunch; nor shall the provisions of this chapter be construed to apply to fresh berries and to other small fruits which are customarily offered for sale and sold by the box, basket, or other receptacle, except, however, when such fresh berries or such other small fruits are offered for sale or sold in bulk, in which case the provisions of this chapter shall apply to the extent that such fresh berries and such other small fruits shall be offered for sale and sold by avoirdupois net weight only; provided, further, however, that all fresh berries and such other small fruits when offered for sale or sold

shall be so offered or sold in boxes, baskets, or receptacles of uniform size to hold one (1) quart or one (1) pint dry measure only, which said boxes, baskets, or other receptacles shall be uniformly and evenly filled throughout.

(b) The term "commodities" as used in this section shall be construed to mean commodities or articles (other than liquids) which are capable of being measured by dry capacity measure.

(c) The term "original standard container" as used in this section shall be construed to mean and include only barrels, boxes, baskets, hampers, or similar containers the dimensions or capacity of which is established by Indiana or federal statute, the contents of which have not been removed or repacked, and upon which is plainly and conspicuously marked the net quantity of contents thereof in terms of weight, measure, or numerical count.

(Formerly: Acts 1925, c.86, s.12.) As amended by P.L.152-1986, SEC.89.

IC 24-6-3-13

Weighmaster; appointment; powers and duties

Sec. 13. The division of weights and measures upon application of any county, city, town, corporation, limited liability company, individual, firm, association, or institution may designate one (1) or more employees or some other suitable person or persons, to act as weighmaster for such county, city, town, corporation, limited liability company, individual, firm, association, or institution. Such weighmaster shall be appointed for a specified term and shall, before entering upon official duties, make oath faithfully to execute trust as weighmaster. The division of weights and measures shall issue and keep record of a certificate of appointment which shall designate the location of the scale or scales or measuring devices to be operated by said weighmaster. The rights and duties of weighmasters shall be prescribed by the division and such weighmasters shall not receive compensation from the state for duties so performed. Any weighmaster who commits misconduct in the execution of duties shall forfeit the certificate as weighmaster.

(Formerly: Acts 1925, c.86, s.13.) As amended by Acts 1978, P.L.2, SEC.2420; P.L.2-1992, SEC.759; P.L.8-1993, SEC.367.

IC 24-6-3-14

Definitions

Sec. 14. The word "person" as used in this chapter shall be considered to include also firms, copartnerships, limited liability companies, or corporations. The term "device" or "devices" as used in this chapter shall be construed to include all weights, scales, beams, mechanical devices, or other instruments. The word "sell", "sale", or "buy" as used in this chapter shall be construed to include barter and exchange.

(Formerly: Acts 1925, c.86, s.14.) As amended by P.L.152-1986, SEC.90; P.L.8-1993, SEC.368.

IC 24-6-3-15

Violations

Sec. 15. A person who recklessly violates this chapter commits a Class B misdemeanor.

(Formerly: Acts 1925, c.86, s.15.) As amended by Acts 1978, P.L.2, SEC.2421.

IC 24-6-3-16

Standards for weights and measures; emergency rule adoption; federal standards

Sec. 16. (a) The state department may adopt emergency rules under IC 4-22-2-37.1 to establish standards for weights and measures to be used by the state department. A standard adopted under this section must be the same as or at least as effective as the standards adopted by the National Conference

on Weights and Measures, including amendments to those standards in effect on June 30, 1993, and found in:

- (1) Handbook 44: Specification, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices;
 - (2) Handbook 130: Chapter A, Uniform Packaging and Labeling Regulation;
 - (3) Handbook 130: Chapter B, Uniform Regulation for the Method of Sale of Commodities, except for Section 2.20; and
 - (4) Handbook 133: Checking the Net Contents of Packaged Goods;
- all published by the National Institute of Standards and Technology.

(b) The state department may determine when an amendment to federal standards described in subsection (a) has been adopted. If the state department determines that an amendment to the federal standards has been adopted, the state department may adopt emergency rules under IC 4-22-2-37.1 to amend the rules adopted by the state department under subsection (a). An emergency rule adopted under this subsection must provide a standard that is:

- (1) the same as; or
- (2) at least as effective as;

the amendment to the federal standards for weights and measures. An emergency rule adopted under this subsection must take effect not later than sixty (60) days after the date of publication of the amendment to the federal standards.

As added by P.L.177-1993, SEC.19. Amended by P.L.123-1994, SEC.1.

IC 24-6-3-17

Adoption of rules requiring posting notices concerning oxygenates at service stations; prohibition

Sec. 17. The state department may not adopt rules requiring the posting of notices concerning oxygenates on or near engine fuel dispensers located at retail service stations.

As added by P.L.123-1994, SEC.2.
