

ACT 156

H.B. NO. 3494

A Bill for an Act Relating to Measurement Standards.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to codify, in logical sequence, the responsibilities of the Department of Agriculture, the Board of Agriculture, and the Chairperson of the Board of Agriculture currently in effect under Chapters 486, 486D, 292, and 486A, Hawaii Revised Statutes.

Chapters 486, 486D, 292 and 486A will be combined into a new Chapter 486, Part I, Part II, Part III and Part IV, respectively.

SECTION 2. Chapters 292, 486, 486A and 486D, Hawaii Revised Statutes, are repealed.

SECTION 3. The Hawaii Revised Statutes is amended by adding a new chapter 486 to read as follows:

“CHAPTER 486

PART I MEASUREMENT STANDARDS, UNIFORM PACKAGING AND LABELING

§486-1 Definitions. As used in this chapter, unless the context otherwise requires:

“Administrator” means the administering officer of the division of measurement standards.

“Advertising” or “advertising medium” includes all publicity, mass media, signs, banners, posters, placards, labels, streamers, marks, brands, grades, descriptions or displays.

“Board” means board of agriculture.

“Certificate of measure” includes a certificate of measure issued in compliance with this chapter, and shall be prima facie evidence of the accuracy of the amount shown.

“Chairperson” includes the chairperson of the board of agriculture and when specifically designated by the chairperson for the purpose of effectuating this chapter, the deputy to the chairperson.

“Commodity in package form” includes a measure of a consumer commodity in either bulk or packaged form, which may or may not be associated with a posted price per unit measure, exclusive however of any auxiliary shipping container enclosing packages that individually conform to the requirements of this chapter. An individual item or lot of any commodity not in package form in the usual sense, but with which a price per unit measure is associated is a commodity in package form.

“Consumer commodity” means any article, product, good or agricultural or other commodity of any kind that is customarily produced or distributed for sale through mercantile or retail sales outlets for consumption or use by individuals, including but not limited to food products or consumer packages.

“Consumer package” means a commodity in package form that is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption or use by individuals for the purpose of personal care or about the household or in connection with personal possessions.

“Department” means department of agriculture.

“Gasoline” includes any product which conforms to the standards as established by the American Society for Testing and Materials, and as adopted or amended and adopted by rule of the board.

“Holding tank” includes any tank, other than vehicle tank, intended to hold, store, or otherwise contain, any product for commercial use, either as a measure per se or as a container.

“Inspector” includes the chairperson, administrator, and any qualified individual so designated by the department of personnel services and appointed as such by the board.

“Intrastate commerce” means commerce or trade begun, carried on, and completed wholly within the limits of the State.

“Introduced into intrastate commerce” means the time and place at which the first sale and delivery of a commodity is made within the State, the delivery being made either directly to the purchaser or to a common carrier for shipment to the purchaser.

“Label” includes any written, printed or graphic matter affixed to, applied to, attached to, blown into, formed, molded into, embossed on, or appearing upon or adjacent to a consumer commodity, for purposes of branding, pricing, identifying, or giving any information with respect to the consumer commodity.

“Lubricating product” includes those products which are intended for use in internal combustion engines or for purposes of lubrication, and which conform

to the specifications as established by the American Society for Testing and Materials, or the Society of Automotive Engineers and which have been adopted, or amended and adopted by rule of the board.

"Manufacturer" includes manufacturers, processors, producers, packers, refiners, importers, dealers, or agents at wholesale or retail level.

"Measure" includes all measures of every kind, including but not limited to weight, mass, length, volume, and count; instruments and devices for measuring; and appliances and accessories associated with any such instruments and devices.

"Measurement standards" includes any standard or definition or model or reference or measurement relating to metrology including but not limited to weights and measures, artifacts, and reproducible definitions of a unit of measure and their applicable tolerances including those of the SI, and definitions of a lot size, sample and tolerances as related to statistical inspection.

Such standards shall, insofar as it is appropriate, be traceable and in agreement with their counterpart as established by the National Bureau of Standards, the American Society for Testing and Materials, the American National Standards Institute, the International Organization of Legal Metrology, the International Bureau of Weights and Measures and as related to SI, to the standards established by the Secretary of Commerce and adopted or amended and adopted by rule of the board.

"Metric system" means the SI or International System of Units, as established by the General Conference of Weights and Measures in 1960 and as interpreted or modified for the United States by the Secretary of Commerce. The modernized metric system is identified by the capital letters "SI" in all languages. Whenever the term "metric" or "metric system" or "metric system of measurement" is used, it shall mean "SI".

"Misbranded" includes:

- (A) False, incomplete, incorrect or misleading labeling;
- (B) Misrepresentation as to the identity, quantity, quality or point of origin;
- (C) Misrepresentation as to the principal place of business of the manufacturer;
- (D) Misrepresentation by vignette, pictorial display, identifiable geographical location or by any term, word or phrase in juxtaposition to any other information associated with, labeled on or accompanying the consumer commodity which falsely alludes to a specific point of origin, a general locale such as a state, or to historical usage by a people;
- (E) Misrepresentation as to originality or creativity;
- (F) Misrepresentation of the consumer commodity as an imitation to another or as an imitation to a generic product; and
- (G) Misrepresentation in any other manner tending to confuse the prospective purchaser.

"Nonconsumer package" means any commodity in package form other than a consumer package, and particularly a package designed solely for industrial or institutional use or for wholesale distribution only.

"Octane index" means the resultant of the RON (Research Octane Number) plus MON (Motor Octane Number) divided by two.

"Package" means a container or wrapper enclosing a commodity for sale, delivery or display, but does not include shipping containers or wrapping used solely for the transportation of that commodity.

"Petroleum product" shall have the meaning established under section 486-50.

"Petroleum product dispenser" includes petroleum product measuring devices but is not limited to: lubricating oil bottles, measure-containers, containers, and mechanisms or machines designed to measure and deliver liquid by a definite

mass or volume. Means may or may not be provided to indicate automatically or on a command signal, one of a series of unit prices or the total money value or cost of the liquid measured, or to make deliveries corresponding to specific money at a definite unit price.

“Sell” and “sale” include barter and exchange.

“Standard test” or “standard method” includes any test or method conducted or prescribed in accordance with the measurement standards established under section 486-1.

“State” means the State of Hawaii.

“Vehicle tank” means any tank, which is mounted on a vehicle and is intended for use as a container.

§486-2 Cooperation; uniformity of regulations. The board may cooperate and enter into agreements with any State or county agency, federal or other state or county agency with similar statutory functions for the purpose of carrying out the respective parts of this chapter and to establish uniformity, to the extent that it is reasonably possible, with federal enactments or regulations consistent with the respective parts of this chapter.

§486-3 Construction. The license required by any part of this chapter shall be in addition to any other license required by law.

The operation and effect of any provision of the respective parts of this chapter conferring a general power shall not be impaired or qualified by the granting of a specific power or powers, and to that end each provision of the respective parts of this chapter shall be construed liberally.

If any provision of the respective parts of this chapter is in conflict with any statute, ordinance, rule or regulation, the provisions of this chapter shall take precedence.

§486-4 Division of measurement standards; administrator. There shall be a division of measurement standards within the department of agriculture. The board shall appoint an administrator of measurement standards, who shall enforce the board’s rules and administer the division and such technical and clerical personnel as are necessary to carry out parts I, II, III, and IV of this chapter, in accord with the power, authority and duties delegated by the board.

§486-5 Powers and duties of the administrator, and inspectors. The administrator may delegate any of his authority, powers and duties to the inspectors or other measurement standards personnel when such delegation is deemed necessary for the efficient and effective enforcement of the respective parts of this chapter.

§486-6 General powers and duties of board. The board shall have the custody of the State measurement standards including the other standards and equipment provided for by this chapter, and shall keep accurate records of the same. The board shall maintain such standards in a protective environment, as appropriate to such standards, and through the administrator and inspectors, shall enforce parts I, II, III and IV of this chapter. The board shall have and maintain general supervision over the measurement standards proposed, established, or in use, and measures and measurement standards offered for sale, sold, or in use in the State.

§486-7 Specific powers and duties of the board; rules. The board shall issue from time to time reasonable rules for the enforcement of the respective parts of this chapter. These rules shall have the force and effect of law and shall govern the use or application of measurement standards, measures, and measuring transactions in the State. These rules may include:

- (1) Standards of net measure, and reasonable standards of fill for any commodity in package form;
- (2) Rules governing the technical and reporting procedures to be followed, the report and record forms to be used by persons subject to the provisions of this chapter and the marks of approval and rejection to be used by the administrator, inspectors and measurement standards personnel in the discharge of their official duties;
- (3) Exemptions from the sealing, labeling, marking, or other requirements of the respective parts of this chapter;
- (4) Rules and fees governing the mandatory registration or resident service persons, and procedures for invalidating such registration when necessary for protection of the consumer;
- (5) Rules governing performance bonding of non-registered or non-resident service persons;
- (6) Schedules and fees for licensing measuring devices;
- (7) Schedules and fees for calibrating or testing measurement standards, and registration of the products covered by such measurement standards;
- (8) Specifications, tolerances and other technical requirements with respect to the packaging, registering, handling, storing, advertising, labeling, dispensing, and selling of petroleum products;
- (9) Rules to assure that amounts of commodities or services sold are determined in accordance with good commercial practice and are so determined and represented as to be accurate and informative to all parties at interest; and
- (10) Such other rules or regulations as the board deems necessary for the enforcement of the respective parts of this chapter.

These rules shall include specifications, tolerances and other technical requirements designed to eliminate from use those measures and measurement standards:

- (A) That are not accurate;
- (B) That are of such construction that they are faulty, that is, that are not reasonably permanent in their adjustment or will not repeat their indications correctly; or
- (C) That facilitate the perpetration of fraud.

In addition, the board shall promulgate rules relating to SI, definitions, standards, tolerances, use, applicability and units. The specifications, tolerances and other technical requirements for measuring devices as recommended and published by the National Bureau of Standards as adopted, or amended and adopted by the board; and those standards published by any of the standards-setting bodies identified in the definition of measurement standards under section 486-1 as adopted, or amended and adopted by the board, together with rules issued by the board under authority of the respective parts of this chapter, shall be the specifications, tolerances, and other technical requirements for measures and measurement standards of the State.

The board may, pursuant to chapter 91, adopt, or amend and adopt, in whole or in part, any measurement standard established by the National Bureau of Standards or by the standards setting bodies identified in the definition of measurement standards under section 486-1. For the purpose of parts I, II, III or IV of this chapter, a measure or measurement standard is "correct" when it conforms to all applicable sections of the respective parts of this chapter or to such rules promulgated pursuant thereto; all other measures and measurement standards are "incorrect".

§486-8 Systems of measurement. The United States customary system of

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weights and measures and the metric system of measurement are jointly recognized, and either one or both shall be used by rule of the board for all measurement purposes in the State. The definitions of basic units of measure, the tables of measure, and measure equivalents, the specifications, tolerances and other technical requirements for measuring devices, as published by the National Bureau of Standards, and adopted, or modified and adopted by the board, together with the measurement standards provided for herein, are recognized and shall govern measurement standards, measuring equipment and measuring transactions in the State.

§486-9 State measurement standards. The State measurement standard artifacts shall be in conformity with the measurement standards of the United States. As applicable, they shall have been calibrated for such use by the National Bureau of Standards or other appropriate agency and shall be maintained in such calibration, as is prescribed by that bureau or agency, by and within the laboratory of the State division of measurement standards. They shall not be removed from that laboratory except upon request of the National Bureau of Standards or other appropriate agency for calibration audit, provided that they may be relocated for the convenience of the State by directive of the governor.

§486-10 Secondary standards and equipment. The State shall supply secondary standards and other equipment as is necessary to carry out the provisions of this chapter. These standards shall be verified, by comparison with the State standards, upon their initial receipt and at least once a year thereafter.

§486-11 General testing. Unless otherwise provided by law, the department, through the division of measurement standards, shall inspect and test, to ascertain if they are correct, all measurement standards and measuring devices kept, offered, or exposed for sale, sold or in use in the State. The department may, as often as it deems necessary, inspect and test, to ascertain if they are correct, all measurement standards and measuring devices used in determining the measurement of commodities or things sold, or offered or exposed for sale, on the basis of measure; in computing the basic charge or payment, including taxes, for services rendered on the basis of measure; in determining measurement when a charge is made for such determination, including the payment of any associated tax; provided that in compliance with a rule of the board, tests may be made on representative samples of such commodities of things or devices, and the lots of which samples are representative shall be held to be correct or incorrect upon the basis of the results of the inspections and tests on such samples; and provided, that with respect to single-service devices designed to be used only once and to be then discarded or with respect to devices uniformly mass-produced, as by means of a mold or die, and not susceptible of individual adjustment, the inspection and testing requirements of this section will be satisfied when inspections and tests are made on representative samples of such devices, and the lots of which samples are representative shall be held to be correct or incorrect upon the basis of the results of the inspections and tests of such samples.

§486-12 Testing at State-supported institutions. The department, through the division of measurement standards, shall from time to time test all measures used in establishing or verifying any other measurement, including any measure or measurement standard used in checking the receipt or disbursement of supplies in every institution for the maintenance of which moneys are appropriated by the legislature, reporting its findings, in writings, to the supervisory board and to the executive officer of the institution concerned.

§486-13 Use; disposition of correct or incorrect apparatus. The depart-

ment, through the division of measurement standards, shall type approve for use, and seal or mark with appropriate devices, such measures and measurement standards as it finds, upon inspection and test, to be "correct" as defined in section 486-7, and in compliance with such type approval rules as the board may establish. The department, through the division of measurement standards shall reject and mark or tag as "rejected" such measures and measurement standards as it finds, upon inspection and test, to be "incorrect" as defined in section 486-7, or in non-compliance with such type approval rules as the board may establish; provided, that sealing or marking shall not be required with respect to such measures and measurement standards as may be exempted therefrom by a rule of the board issued under the authority of section 486-7. Measures and measurement standards that have been rejected as to type or for other valid reasons may be confiscated and may be destroyed by the department, through the division of measurement standards, if not corrected as required by section 486-14, or if used or disposed of contrary to the requirements of section 486-14. In carrying out this section, the department, through the division of measurement standards, may use such terms as "rejected", "accepted," "incorrect," "inaccurate," "accurate," "tested," "approved," "certified," or terms of similar import on marks or tags or certificates, as necessary, to convey to all interested parties the condition or state of the device or apparatus. Any such mark or tag shall be subject to section 486-7 and its unauthorized application or removal shall be a violation of this chapter.

§486-14 Duties of owners or custodians of measuring apparatus. Measures and measurement standards shall be subject to the control of the board until such time as they have been type approved for use, as provided under section 486-13. Measures or measurement standards that have been initially type approved and subsequently found to be incorrect as defined under section 486-7 or section 486-13 shall remain subject to the control of the rejecting authority until such time as suitable repairs shall have been effected, as provided by rule of the board, or such devices may be destroyed. The owners of the unapproved or rejected measures or measurement standards shall cause the same to be type approved or made correct within thirty days or such longer period as may be authorized by the rejecting authority; or, in lieu of this, may dispose of the same, but only in such manner as is specifically authorized by the rejecting authority. Measures and measurement standards subject to this chapter that have not been type approved or that have been rejected shall not be used until they have been officially type approved or re-examined and found to be correct or until specific written permission for such use is issued by the rejecting authority, or until the rejection tag has been removed and the rejected device or apparatus repaired or corrected and placed in service by a person duly registered to perform the acts under a rule adopted by the board for the registration of measuring device service persons.

§486-15 Method of sale of commodities; general. Commodities in liquid form shall be sold only by liquid measure or by weight, and, except as otherwise provided in parts I or II of this chapter, commodities not in liquid form shall be sold only by weight, mass, volume, length, area, or by count; provided, that liquid commodities may be sold by weight and commodities not in liquid form may be sold by count only if such methods give accurate information as to the quantity of commodity sold; and provided further, that the provisions of this section shall not apply, if exempted by a rule of the board:

- (1) To commodities when sold for immediate consumption on the premises where sold;

- (2) To vegetables when sold by the head or bunch;
- (3) To commodities in containers standardized by law of this State or by federal law;
- (4) To commodities in package form when there exists a general consumer usage to express the quantity in some other manner;
- (5) To concrete aggregates, concrete mixtures, and loose solid materials such as earth, soil, gravel, crushed stone, and the like, when sold by cubic measure; or
- (6) To unprocessed vegetable and animal fertilizer when sold by cubic measure.

The board may adopt such reasonable rules as may be necessary to assure that the measure of any commodity for sale reflects accurate information and fair measurement practices to all concerned.

§486-16 Packages; declarations of quantity and origin; variations; exemptions. Except as otherwise provided in part I, II or III of this chapter, any commodity in package form introduced or delivered for introduction into or received in intrastate commerce, kept for the purpose of sale, or offered or exposed for sale, shall bear on the outside of the package such definite, plain, and conspicuous declarations of:

- (1) The identity of the commodity in the package;
- (2) The net quantity of the contents in terms of measure; and
- (3) In the case of any package kept, offered, or exposed for sale, or sold in any place other than on the premises where packed, the name and place of business of the manufacturer, packer, or distributor, as may be prescribed by rule of the board;

provided, that, in connection with the declaration required under paragraph (2) above, neither the qualifying term "when packed" or words of similar import, nor any term qualifying a unit of measure (for example, "jumbo," "giant," "full," and the like) that tends to exaggerate the amount of commodity in the package shall be used; and provided further, that under paragraph (2) above, the board may, by rule, establish reasonable variations from the declared measure; exemptions as to small packages; and exemptions as to commodities put up in variable measures for sale intact and either customarily not sold as individual units or customarily measured at time of sale to the consumer.

§486-17 Declarations of unit price on random packages. In addition to the declarations required by section 486-16, any commodity in package form, being one of a lot containing random measure of the same commodity and bearing the total selling price of the package, shall bear on the outside of the package a plain and conspicuous declaration of the price per single unit of measure, as established by rule of the board.

§486-18 Deceptive package. No commodity in package form shall be so wrapped, or labeled, nor shall it be in a container so made, formed, or filled as to mislead the purchaser as to the quantity of the contents of the commodity in the package, and the contents of a container shall not fall below such reasonable standard of fill as may have been prescribed for the commodity by rule of the board.

§486-19 Advertising packages for sale. Whenever a commodity in package form is advertised in any manner, excluding its labeling, and the retail price of the package is stated in the advertisement, there shall be closely and conspicuously associated with such statement of price a declaration of the basic quantity of contents of the package as is required by law or rule to appear on the package; provided,

that, where the law or rule requires a dual declaration of net quantity to appear on the package, only the declaration that sets forth the quantity in terms of the smaller unit of measure (the declaration that is required to appear first and without parentheses on the package) need appear in the advertisement; and provided further, that there shall not be included as part of the declaration required under this section such qualifying terms as "when packed," "minimum," "not less than," or other terms of similar import, nor any term qualifying a unit of measure (for example, "jumbo," "giant," "full," and the like) that tends to exaggerate the amount of commodity in the package.

§486-20 Sale by net measure. The term "measure" unless qualified to the contrary, as used in parts I and II of this chapter in connection with any commodity in package form shall mean net measure, such qualifications being subject to rule of the board.

§486-21 Misrepresentation of price. Whenever any commodity or service is sold, or is offered, exposed, or advertised for sale, by measure, the price shall not be misrepresented, nor shall the price be presented in any manner calculated or tending to mislead or deceive an actual or prospective purchaser. Commodities in package form, when offered for sale at retail, shall reflect the retail price at which the public may, without special credentials or other requirements, purchase such commodities. Whenever an advertised, posted, or labeled price per unit of measure includes a fraction of a cent, all numerals expressing the fraction shall be prominently displayed and the numeral or numerals expressing the fraction shall be immediately adjacent to, of the same general design and style as established by rule of the board.

§486-22 Inspection of packages. The department, through the division of measurement standards, shall measure and inspect packages or amounts of commodities kept, offered, or exposed for sale, sold, or in the process of delivery; to determine whether the same contain the amounts represented and whether they be kept, offered, or exposed for sale or sold in accordance with the law. When such packages or amounts of commodities are found not to contain the amount represented, or are found to be kept, offered, or exposed for sale in violation of law, the department, through the division of measurement standards, may order them off sale and may mark or tag them to show them to be illegal. The department, through the division of measurement standards, may employ recognized sampling procedures under which the compliance of a given lot of packages will be determined on the basis of the result obtained on a sample selected from and representative of such lot. No person shall:

- (1) Sell, or keep, offer or expose for sale any package or amount of commodity in package form unless such package or amount of commodity in package form is in full compliance with all legal requirements;
- (2) Sell, or keep, offer or expose for sale any package or amount of commodity in package form that has been ordered off sale or marked or tagged as provided in this section, and which package or amount of commodity in package form has subsequently been brought into legal compliance, unless and until written authorization for such action has been issued by the administrator;
- (3) Dispose of any package or amount of commodity in package form that has been ordered off sale or marked or tagged as provided in this chapter that has not been brought into full compliance with all legal requirements, until written authorization for such disposal has been issued by the administrator.

Nothing in this section shall prohibit the administrator from authorizing the disposal of any package or amount of commodity in package form, when in the administrator's discretion the best interest of the public will be served by such authorization.

The department, through the division of measurement standards, may seize and dispose of any package or amount of commodity in package form that has been ordered off sale for reasons of legal non-compliance when remedial action is not effected as required under the terms of the off sale order, as established by rule of the board.

§486-23 Investigations. The administrator of measurement standards shall investigate complaints made to the administrator concerning violations of this part and shall, upon the administrator's own initiative, conduct such investigations as the administrator deems appropriate and advisable to develop information on prevailing procedures in commercial quantity determination and on possible violations of this part and to promote the general objective of accuracy in the determination and representation of quantity in commercial transactions.

§486-24 Stop-use, stop-removal, stop movement and removal orders. The administrator may issue citations and, incident thereto, stop-use orders, stop-removal orders, stop movement and removal orders with respect to measures and measurement standards being, or susceptible of being, unlawfully used; and issue citations and, incident thereto, stop-removal orders, stop movement and removal orders with respect to commodities in package form kept, offered, or exposed for sale, sold, or in process of delivery, whenever in the course of the administrator's enforcement of the law the administrator determines that such measure or measurement standard or commodities in package form do not comply with the applicable sections of part I, II, III or IV of this chapter or the rules promulgated thereunder, and no person shall use, remove or move from the premises, as specified, any measure, measurement standard, package or amount of commodity contrary to the terms of a stop-use order, stop-removal order, stop movement or removal order issued under the authority of this section.

§486-25 Misbranding. (a) No person shall deliver for introduction, hold for introduction or introduce; or keep, offer or expose for sale; or sell any consumer commodity which is misrepresented or misbranded in any manner.

(b) The board, pursuant to section 486-7 and chapter 91, shall adopt rules relating to misbranding. The rules may:

- (1) Require any person involved with a specified consumer commodity to keep and make available for inspection or copying by the administrator adequate records to substantiate the source of the consumer commodity, or in the case of blends, the source of such constituents, as may be required by the board;
- (2) Establish fanciful names or terms, and in the case of blends, minimum constituent content by weight, to be used in labeling to differentiate a specific consumer commodity from an imitation or look-alike; or
- (3) Establish requirements to reconcile the respective volumes of specific consumer commodities received versus the total amounts output, either as whole or processed product or as blends.

In addition, the board may adopt other rules as the board deems necessary for the correct and informative labeling of consumer commodities.

§486-26 Hawaii-made products. No person shall keep, offer, display or expose for sale, or solicit for the sale of any item, product, souvenir, or any other merchandise which is labeled "made in Hawaii" or which by any other means

misrepresents the origin of the item as being from any place within the State, which has not been manufactured, assembled, or fabricated within the State and which has not had at least twenty-five per cent of its wholesale value added by manufacture, assembly, or fabrication within the State.

§486-27 Bulk deliveries. When a commodity is purchased in bulk or when a charge is levied for the transportation of a commodity in bulk, the delivery of such commodity shall be accompanied by a "certificate of measure," issued by a licensed measure master in a form prescribed by the administrator, and shall contain at least the following information:

- (1) Name and address of the vendor,
- (2) Name and address of the purchaser,
- (3) The net measure of the delivery, and
- (4) The date, time and place of the measure determination and the name of the person who made such determination.

The board may, by rule, require any additional data that will assure positive accurate description of the quantities determined.

§486-28 Measure master's license, fee; regulations; offenses; penalties. The administrator may issue licenses to qualified measure masters. For the purpose of this section, a measure master is a person who is licensed to measure and to issue documentation relating to such measurement. An annual license fee of not less than \$20, as established by rule of the board shall be paid and the fee shall be deposited into the general fund. The board may provide by rule for the exemption of state or county employees who qualify as measure masters from payment of the license fee.

The board may, pursuant to chapter 91, adopt rules and regulations governing, but not limited to, the following subject matter:

- (1) Qualifications as to age, character, ability to measure, experience, and education of a measure master;
- (2) Creation of a seal to be utilized by a measure master;
- (3) Transactions requiring certificates of measure;
- (4) Execution requirements of a certificate of measure;
- (5) Bonding;
- (6) Record keeping;
- (7) Prohibited acts;
- (8) Suspension and revocation of a license;
- (9) Such other matters that will effectuate the purpose of this section.

Any person who requests a measure master to measure any property, produce, commodity, or article falsely or incorrectly; or who issues a false or incorrect certificate of measure, or any document simulating, forging, or duplicating the certificate of measure as defined in section 486-1 and who is not a measure master, shall be fined not less than \$500 or imprisoned not less than three months, or both.

Any measure master who falsifies a certificate of measure, or who delegates the measure master's authority to any person who is not a measure master, or who preseals a certificate of measure with the measure master's official seal before performing the act of measuring, shall be fined not less than \$1,000 or imprisoned not less than six months or both.

Any person who violates any provision of this section or any rule or regulation adopted pursuant thereto for which no specific penalty has been provided shall be fined not less than \$100 nor more than \$500.

§486-29 Hindering or obstructing an officer or inspector; bribery; penalties. Any person who shall hinder or obstruct in any way an inspector or any

other officer or employee in the performance of the inspector's, officer's, or employee's official duties prescribed by this chapter or any rule or regulation promulgated pursuant to this chapter, shall be fined not less than \$200 nor more than \$500, or imprisoned not more than three months, or both.

Any person who shall give, pay, or offer, directly or indirectly, to any inspector or any other officer or employee of this State authorized to perform any of the duties prescribed by this chapter or any rule, regulation or order adopted or issued pursuant to this chapter, any money or other thing of value, with intent to influence said inspector, or other officer or employee of this State, in the discharge of any duty herein provided for shall be fined not more than \$5,000 or imprisoned not more than two years, or both.

Any inspector or other officer or employee of the State authorized to perform any of the duties prescribed by this chapter who shall accept any money, gift, or other thing of value from any person, given with intent to influence the inspector's, officer's, or employee's official action, shall be summarily discharged from the inspector's, officer's, or employee's employment and shall be fined not more than \$5,000 or imprisoned not more than five years, or both.

§486-30 Impersonation; forgery; penalties. Any person who shall impersonate in any way an inspector or any officer or employee charged with the administration or enforcement of the respective parts of this chapter, or forge any official device, seal or mark, shall be fined not less than \$100 nor more than \$500, or imprisoned not more than one year, or both.

§486-31 Enforcement; citation and notice to appear; penalty; right of entry and inspection; stopping vehicles. Any authorized inspector or other authorized measurement standards personnel may, upon arresting any person for violation of part I, II, III or IV of this chapter, including rules promulgated thereunder, take the name, address, and any other pertinent information of such person and issue him a citation and notice to appear, printed in the form hereinafter described, and answer to the charge against him at a certain place and at a time as prescribed by the district courts.

There shall be a form of citation and notice to appear for use in citing violators of part I, II, III or IV of this chapter and the rules promulgated thereunder by the board, which does not mandate the taking into custody of such violators. The citation and notice to appear shall be printed in a form commensurate with the form of other citations and notice to appear used in modern methods of arrest and shall be designed to include all necessary information. The form and contents of the citation and notice to appear shall be as adopted or prescribed by the district courts.

In every case when a citation and notice to appear is issued, it shall be issued in accord with a regulation of the board, consistent with the provisions as established by the district courts. Every citation and notice to appear shall be consecutively numbered and each carbon copy shall bear the number of its respective original.

Any person who fails to appear at the place and within the time specified in the citation and notice to appear shall be guilty of a violation as provided in the penal code.

Any authorized inspector may cite and, incident to such citation, seize, without formal warrant, incorrect or unsealed measures, measurement standards, or amounts or packages of commodity found to be used, retained, offered, or exposed for sale or sold in violation of law.

Any authorized inspector may stop any vehicle subject to this chapter where probable cause exists and require the driver to move the vehicle to a designated place for inspection.

The chairperson or the administrator may, in the public interest, serve suitable notices or warnings rather than resorting to prosecution for minor violations and may void citations for de minimis violations hereof, when the best interest of the public is served in so doing.

Any authorized inspector may enter and go into or upon at any reasonable time, without formal warrant, after having made a reasonable attempt to identify himself, in accordance with the law, any structure, premises, or any other place where commercial transactions or articles subject to this chapter are being conducted or located, provided that, in the case where an objection to such entry is expressed by competent authority, a warrant shall be obtained prior to such entry.

When a complaint is made to any prosecuting officer of the violation of any of the parts of this chapter, including rules and regulations promulgated thereunder, and the arrest or prosecution of the violator is sought, the arresting officer or employee, who issued the citation and notice to appear, shall subscribe to it under oath administered by an official, whose name has been submitted to the prosecuting officer and who has been designated by the administrator to administer the same and, upon probable cause, the court may issue a warrant for the violator.

§486-32 Offenses and penalties. Any person who, by himself, or by his servant or agent, or as the servant or agent of another person, performs any one of the acts enumerated in paragraphs (1) through (9) of this section shall be guilty of a misdemeanor and, upon a first conviction thereof, shall be punished by a fine of not less than \$200 nor more than \$500, or by imprisonment for not more than three months, or both; and, upon a second or subsequent conviction thereof, shall be punished by a fine of not less than \$500 nor more than \$1,000 or by imprisonment for not more than one year, or both:

- (1) Use or have in possession for the purpose of using for any purpose specified in section 486-11, sell, offer, or expose for sale or hire, or have in possession for the purpose of selling or hiring, an incorrect or unapproved type measure or measurement standard or any device or instrument used to or calculated to falsify any measure.
- (2) Use, or have in possession for the purpose of current use for any purpose specified in section 486-11, an unapproved type or approved type measure or measurement standard that does not bear a seal or mark such as is specified in section 486-13, unless such measure or measurement standard has been exempted from testing by the provisions of section 486-7 or 486-11 or by a rule of the board issued under the authority of section 486-7, or unless the device has been placed in service as provided by a rule of the board issued under the authority of section 486-11, or unless the measure or measurement standard is being installed or repaired preparatory to installation.
- (3) Dispose of any rejected or condemned measure or measurement standard in a manner contrary to law or rule.
- (4) Remove from any measure or measurement standard, contrary to law or rule, any tag, seal, or mark placed thereon by the appropriate authority.
- (5) Sell, or offer or expose for sale, less than the quantity the person represents of any commodity, thing, or service.
- (6) Manipulate in any manner the representation of the quantity of any commodity, thing or service furnished, delivered or provided to the detriment or unjust enrichment of any person involved.
- (7) Keep for the purpose of sale, advertise, or offer or expose for sale, or sell any commodity, thing, or service in a condition or manner contrary to law or rule.

- (8) Use in retail trade, a measure that is not so positioned that its indications may be accurately read and the measuring operation observed from some position which may reasonably be assumed by a customer.
- (9) Violate any provision of the respective parts of this chapter, the rules or the regulations promulgated under the respective parts of this chapter for which a specific penalty has not been prescribed.

§486-33 Injunction. In addition to any other remedy by law provided, the chairman may apply to any court of competent jurisdiction for, and the court upon hearing and for cause shown may grant, a temporary or permanent injunction restraining any person from violating any provision of the respective parts of this chapter or the rules promulgated thereunder.

§486-34 Presumptive evidence. For the purposes of the effective enforcement of the respective parts of this chapter, proof of the existence of a measure or measurement standard in or about any building, enclosure, stand, or vehicle in which or from which it is shown that buying or selling is commonly carried on, shall, in the absence of conclusive evidence to the contrary, be "presumptive proof of the susceptibility of commercial use" of such measure or measurement standard.

§486-35 Nonapplicability. This part shall not apply to measures or measuring devices utilized in public utilities that are subject to measurement standards control under any other statute or rule of the State.

PART II PETROLEUM PRODUCT ACCOUNTING

§486-50 Definitions. As used in this part, unless the context otherwise requires:

"Cubic foot" means that amount of liquefied petroleum product, vapor, or natural gas vapor, or synthetic natural gas vapor, or any blend of the above, which will occupy 1728 cubic inches when its temperature is sixty degrees fahrenheit at a pressure of 760 mm of Hg (mercury). The density of the Hg shall be 13.5951 grams per cubic centimeter per second, per second.

"Petroleum product" includes automotive gasoline, diesel fuels, fuel oils, liquefied petroleum gas both liquid and vapor, residuals, distillates and fractions, kerosene, aviation fuels, turbine fuels, solvent, hydro-carbons or synthetics, crude oil, lubricating oil, or any other oil or distillate or blends of the above or any other product or by-product normally considered a petroleum product, and synthetic natural gas or natural gas and manufactured gas or blends thereof.

"U. S. petroleum gallon" means that amount of petroleum product which occupies 231 cubic inches exactly when its temperature is sixty degrees fahrenheit, or the expanded or contracted equivalent thereto at any other temperature.

§486-51 Applicability. This part and the measurement requirements herein, shall apply to the blending, charging, dealing, dispensing, distributing, exchanging, exporting, handling, importing, labeling, loading, manufacturing, marketing, measuring, packaging, piping, processing, reprocessing, producing, refining, or re-refining, retailing, selling, transporting, taxing, or wholesaling, or to any of the variant forms of the above or to the person, equipment, measurements, and calculations incident to such actions or activities involving petroleum products.

§486-52 Measurement standard. (a) Any petroleum product which is in a liquid state under conditions of 760 millimeters of Hg at sixty degrees fahrenheit shall be measured in terms of the U. S. petroleum gallon; its multiple or decimal submultiples, or compatible units of the SI as established by rule of the board.

(b) Any petroleum product which is in a vapor state under conditions of 258.575 millimeters or less of Hg at sixty degrees fahrenheit shall be measured in terms of cubic feet or in terms of a U. S. petroleum gallon; their multiples or decimal submultiples, or compatible units of the SI as established by rule of the board.

§486-53 Violations; penalties. Any person who commits any of the prohibited acts or omits any of the prescribed acts, herein required or required in any rule adopted by the board shall be subject to the penalties provided in section 486-32. Each day that a violation exists, or is continued, or continues to exist, shall be construed as a separate punishable offense.

§486-54 Investigations. The administrator may, upon the administrator's initiative, investigate suspected violations of this part and shall investigate each complaint registered under this part. The administrator may resort to suitable warnings rather than prosecution for minor offenses or those offenses which have been discontinued should the administrator so elect.

PART III ODOMETER ACCURACY AND RECORD MAINTENANCE

§486-70 Findings. The purpose of this part is to assure the accuracy of the odometer system installed in certain passenger cars introduced into the State for use, sale, resale, lease, re-lease, rental, rerental and to any of the above cars when they are intended for export.

The legislature finds that the automotive industry is cognizant of the concern of the public in regard to the over-registration of passenger car odometers, or the fraudulent manipulation thereof, and is desirous of assisting in eliminating such activities and prohibiting the inclusion of any distance measuring device in a passenger car that does not comply with the accuracy requirements of the State.

§486-71 Definitions. For the purposes of this part:

"Certificate of accuracy" includes a manufacturer's certificate of accuracy, an interim certificate of accuracy and any written warranty attesting to the initial and subsequent accuracy of an odometer system, and the endorsement thereon.

"Certificate of ownership" has the meaning under section 286-47.

"Endorsement" means informational disclosure relating to a specific passenger car, including the vehicle identification number, odometer reading, seller's signature if any, and such other information as required by rule of the board.

"Odometer" is an analog or digital measuring device that reflects distance traveled.

"Passenger car" means a vehicle with self-contained motive power and seating capacity up to twelve passengers (excluding the driver), not exceeding 16,000 pounds gross vehicle weight.

§486-72 New passenger car endorsement required. Except as by rule provided, all passenger car manufacturers or designated representatives, whose passenger cars are subject to this part, shall furnish the buyer of a new (not used) passenger car a properly endorsed manufacturer's certificate of accuracy attesting to the odometer system accuracy and its initial odometer indication.

§486-73 Endorsement by seller required; upon transfer of title. Any passenger car, the title of which changes and whose model year does not exceed twenty-five years shall have its certificate of ownership, when such format provides space for endorsement, endorsed by the seller at the time of title transfer, provided

that this section shall not apply to persons vested with only a security interest. When the format does not provide space for endorsement, a certificate of accuracy, supplied by the administrator may be utilized.

§486-74 Licensing without endorsement; prohibited. Any other law or regulations to the contrary notwithstanding, no passenger car required to have a certificate of ownership endorsement under sections 486-72 or 486-73 shall be licensed for operation within the State by any licensing agency without such endorsement.

§486-75 Properly functioning odometer required. No person shall introduce in the State for any purpose whatever, nor operate within the State for any purpose whatever, a passenger car unless it has installed a properly functioning and correctly calibrated odometer.

§486-76 Fees. Every motor vehicle covered by section 486-72 shall be assessed a verification fee for the initial verification of the accuracy of the odometer system. Such fee shall be levied only once, for each motor vehicle, and shall be payable in an amount and manner as may be prescribed by rule of the board.

§486-77 Tampering with passenger car odometer prohibited; misrepresentation of distance traveled prohibited. (a) It shall be unlawful to:

- (1) Tamper with an odometer, installed in a passenger car, for any purpose. This section shall not be construed to preclude legitimate repair, replacement or adjustment of an odometer, provided that the administrator may require documentation of such repair, replacement or adjustment.
- (2) Advertise for sale, sell, rent, lease or export any passenger car, the odometer of which has been tampered with in such a fashion or manner as to mislead the prospective buyer to believe that the passenger car traveled a lesser distance than it actually has traveled.
- (3) Operate a passenger car on any street or highway, knowing that the odometer of the passenger car is disconnected or nonfunctional.
- (4) Disconnect, turn back, advance or reset the odometer of any passenger car with intent to alter the distance indicated on the odometer.
- (5) Misrepresent the true distance traveled by any passenger car subject to this part, so as to mislead a prospective buyer.

(b) This section shall not preclude the installation, maintenance, repair or replacement of odometers when such action is necessary to cause compliance with this part. Any such action, however, shall expressly be noted on the certificate of ownership and called to the attention of a prospective buyer, in writing.

§486-78 Authority to inspect. The administrator may upon the administrator's own initiative or upon complaint, after properly identifying or making a legitimate effort to identify oneself, enter upon any public or private property, in accordance with law, where odometers may reasonably be stored, held, sold, repaired, altered, manipulated, or otherwise influenced so as to display any digital or analog representation, factual or otherwise, to determine if any actions relating to odometers are being conducted contrary to law.

§486-79 Citation and notice to appear; penalty. The administrator may issue to any person violating this part, a citation and notice to appear, at a given time and place, to answer to charges against the person.

The form, contents, copy designation and disposition, and appearance dates

of such citation and notice to appear shall be prescribed by the district courts. When a complaint of the violation of this part, including any rules adopted thereunder, is made to any prosecuting officer, the arresting officer or employee who issued the citation and notice to appear shall subscribe to it under oath administered by another official or officials of the department, whose name has been submitted to the prosecuting officer and who has been designated by the administrator to administer the same.

§486-80 Impoundment of evidence. The administrator may, for a period not to exceed ninety-six hours, impound as evidence any passenger car in which an inaccurate or incorrect or inoperable odometer system is installed or exists. Such period may be extended by order of the court.

§486-81 Confiscation of evidence. The administrator or any authorized inspector may confiscate as evidence any tools designed to change, manipulate, or otherwise alter the display of an odometer, when the inspector has reason to believe that such tools may be used in an illicit manner or by persons other than licensed dealers, or licensed repair agencies, or by persons gainfully employed by such agencies or dealers.

§486-82 Non-scheduled inspection, permissible. Any authorized inspector may, where probable cause exists, require the driver or custodian of a passenger car to move the passenger car to a designated place for inspection of the car or its odometer system.

§486-83 Scheduled inspection. The administrator or any authorized inspector may schedule odometer system inspection for passenger car(s) at a designated time and place. Failure to move or present the passenger car(s) as directed or scheduled shall be a violation of this part.

§486-84 Civil action. (a) Any person who violates any requirement imposed under this part shall be liable to the buyer, in an amount equal to the sum of:

- (1) Three times the amount of actual damages sustained or \$1,500, whichever is greater; and
- (2) In the case of any successful action to enforce the foregoing liability, the costs of the action, together with reasonable attorney fees as determined by the court.

(b) An action to enforce any liability created under subsection (a) of this section must be brought in a court of competent jurisdiction without regard to the amount in controversy, within two years from the date on which the liability occurred.

§486-85 Disclosure requirements; and record maintenance. All certificates of ownership, as issued by the respective counties, shall by license year 1992 be standardized in a form to be prescribed by the district courts, and such certificates shall have space for entering endorsements, among other requirements established under section 286-47. Each certificate shall have imprinted thereon a disclosure statement consistent with that required under the Federal Motor Vehicle and Cost Savings Act of 1972, et seq., as provided by rule of the board. Individual passenger car odometer records shall be maintained as a function of the vehicle safety check.

§486-86 Rules, authority to adopt or amend. The board shall adopt and amend, from time to time, the necessary rules to implement this part. Provisions of part I may be made applicable to rules promulgated under this part. Such rules

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shall be adopted or amended in accordance with chapter 91. These rules, applicable to passenger cars, may include:

- (1) Definitions, applicable to this part;
- (2) Schedules for odometer verification;
- (3) Procedures for odometer and odometer system verification;
- (4) Accuracy requirements;
- (5) Form formats;
- (6) Exemptions from the requirements of this part and rules promulgated thereunder;
- (7) Such other areas as deemed necessary, by the administrator, to effectively carry out the provisions of this part.

§486-87 Penalties. Any person guilty of committing any of the prohibited acts or omitting any of the required acts of this part or the rules promulgated hereunder shall be guilty of a misdemeanor and shall be fined not less than \$200 nor more than \$500, or be imprisoned not to exceed 90 days, for such first offense and, upon each subsequent violation, shall be fined not less than \$500 nor more than \$1,000, or be imprisoned for a period not to exceed one year, or suffer both such fine and imprisonment.

PART IV BREAD WEIGHT

§486-88 Weight of loaf. A loaf of bread for sale shall be one-half pound; three-quarters pound; one pound; one and a half pounds or multiples of one pound.

§486-89 Variations. Variations from the above weights, the sampling size, definitions, and exemptions shall be established by rule of the board in accordance with chapter 91.

§486-90 Twin or multiple loaves. Twin or multiple loaves may be sold, provided they conform to the above weight requirements.

§486-91 Penalties. Any person who violates the provisions of this chapter shall be subject to the penalties prescribed in section 486-32.”

SECTION 4. Except as specifically contravened, all rules and regulations currently in effect, as they relate to parts I, II, III and IV, shall remain in effect until they are updated, amended or repealed.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 1, 1988.)