

ACT 54

H.B. NO. 1583

A Bill for an Act Relating to Measurement Standards.

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

SECTION 1. Section 486-1, Hawaii Revised Statutes, is amended as follows:

(1) By adding new definitions to be appropriately inserted and to read as follows:

““National type evaluation program” means a program of cooperation between the National Institute of Standards and Technology, the National Conference on Weights and Measures, the states, and the private sector for determining, on a uniform basis, conformance of a type with the relevant provisions of National Institute of Standards and Technology handbook 44, “Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices”; National Institute of Standards and Technology handbook 105-1, “Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures, Specifications and Tolerances for Field Standard Weights (NIST class F)”; National Institute of Standards and Technology handbook 105-2, “Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures,

Specifications and Tolerances for Field Standard Measuring Flask”; or National Institute of Standards and Technology handbook 105-3, “Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures, Specifications and Tolerances for Graduated Neck Type Volumetric Field Standards.”

“Nonconsumer package” or “package of nonconsumer commodity” means any package other than a consumer package, and particularly a package designed solely for industrial or institutional use or for wholesale distribution.

“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.

The term “package” shall not apply to:

- (1) Inner wrappings not intended to be individually sold to the customer;
- (2) Shipping containers or wrapping used solely for the transportation of any commodities in bulk or in quantity to manufacturers, packers, or processors, or to wholesale or retail distributors, but in no event shall this exclusion apply to packages of consumer or nonconsumer commodities, as defined herein;
- (3) Auxiliary containers or outer wrappings used to deliver packages of such commodities to retail customers if such containers or wrappings bear no printed matter pertaining to any particular commodity;
- (4) Containers used for retail tray pack displays when the container itself is not intended to be sold (e.g., the tray that is used to display individual envelopes of seasonings, gravies, etc., and the tray itself is not intended to be sold); or
- (5) Open carriers and transparent wrappers or carriers for containers when the wrappers or carriers do not bear any written, printed, or graphic matter obscuring the label information required by this chapter.

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 of measure shall be considered a package or packages.

“Participating laboratory” means any state measurement laboratory that has been certified by the National Institute of Standards and Technology, in accordance with its program for the certification of capability of state measurement laboratories, to conduct a type evaluation under the national type evaluation program.

“Random measure package” or “random package” means a package that is one of a lot, shipment, or delivery of packages of the same commodity with no fixed pattern of measure.

“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.

“Type evaluation” means the testing, examination, or evaluation of a type by a participating laboratory under the national type evaluation program.”

(2) By amending the definition of “advertising” or “advertising medium” to read as follows:

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

ACT 54

(3) By amending the definition of "consumer package" or "package of consumer commodity" to read as follows:

"'Consumer package' or 'package of consumer commodity' 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 purposes of personal care or in the performance of services ordinarily rendered in or about the household or in connection with personal possessions."

(4) By amending the definition of "correct" to read as follows:

"'Correct', as used in connection with measurement standards, means conformance to all applicable requirements of this chapter and to rules adopted under its authority; all other measures and measurement standards are "incorrect"."

(5) By amending the definition of "label" to read as follows:

"'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, or a package containing any consumer commodity, for purposes of branding, pricing, identifying, or giving any information with respect to the commodity or to the contents of the package, except that an inspector's tag or other nonpromotional matter affixed to or appearing upon a consumer commodity shall not be considered a label requiring the repetition of label information required by this chapter."

(6) By amending the definition of "measure" to read as follows:

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

(7) By amending the definition of "measurement standards" to read as follows:

"'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 Institute of Standards and Technology, 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.]"

SECTION 2. Section 486-7, Hawaii Revised Statutes, is amended to read as follows:

"**§486-7 Specific powers and duties of the board; rules.** (a) The board shall adopt reasonable rules pursuant to chapter 91 for the enforcement of this chapter. These rules shall have the force and effect of law and shall govern the use of application of measurement standards, measures, and measuring transactions in the State.

(b) These rules may include:

- (1) Standards of net measure, and reasonable standards of fill for any [commodity in] package [form];
- (2) 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) The voluntary registration of service persons and service agencies for commercial weighing and measuring devices. These rules may include, but are not limited to, provisions for registration fees, period of registration, requirements for test equipment, privileges and responsibilities of a voluntary registrant, reports required, qualification requirements, examinations to be administered, certificates of registration, and means for revocation of registration;
- (5) Schedules and fees for licensing measuring devices;
- (6) Schedules and fees for calibrating or testing measurement standards, and registration of the products covered by such measurement standards;
- (7) Specifications, tolerances, and other technical requirements with respect to the packaging, registering, handling, storing, advertising, labeling, dispensing, and selling of petroleum products;
- (8) Specifications, tolerances, and other technical requirements for weighing and measuring devices;
- (9) Practices 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;
- (10) Requirements for type evaluation; [and]
- (11) Definitions, applicability, use, units, standards, and tolerances relating to the International System of Units; and
- [(11)] (12) Such other rules as the board deems necessary for the enforcement of this chapter.

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

- (1) That are not accurate;
- (2) 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
- (3) That facilitate the perpetration of fraud.

(d) [In addition, the board may adopt rules relating to SI, definitions, standards, tolerances, use, applicability, and units.] The specifications, tolerances, and other technical requirements for measuring devices [as] and the uniform laws and regulations as adopted by the National Conference on Weights and Measures, recommended and published by the National Institute of Standards and Technology [as] and 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 adopted by the board under chapter 91 and this chapter,] pursuant to chapter 91,² shall be the [specifications, tolerances, and other technical requirements for measures and] basis for measurement standards in² the State. In addition, the board, pursuant to chapter 91, may adopt or amend and adopt any other measurement standard established by the National Institute of Standards and Technology, the American Society for Testing and Materials, the American National Standards Institute, the International Organization of Legal Metrology, the

ACT 54

International Bureau of Weights and Measures, and the Society of Automotive Engineers, among others.

[(e) The board may, pursuant to chapter 91, adopt, or amend and adopt, in whole or in part, any measurement standard established by the National Institute of Standards and Technology or by the standards setting bodies identified in the definition of measurement standards under section 486-1.]”

SECTION 3. Section 486-32, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Civil. Any person who performs any one of the acts enumerated in this subsection shall be fined not more than \$2,000 for each separate offense:

- (1) Use, or have in possession for use in commerce an incorrect device, measure, or measurement standard;
- (2) Dispose of any rejected or condemned measure or measurement standard in a manner contrary to law or rule;
- (3) Sell, or offer or expose for sale, less than the quantity the person represents of any commodity, thing, or service;
- (4) 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; [or]
- (5) Fail to submit a weighing or measuring device for inspection and testing at a time and place specified by the administrator; or

[(5)] (6) Violate any provision of this chapter or any rules adopted under it for which a specific penalty has not been prescribed.”

SECTION 4. Section 486-87, Hawaii Revised Statutes, is amended to read as follows:

“**§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].”

SECTION 5. Section 486-101, Hawaii Revised Statutes, is amended as follows:

“**§486-101 Definitions.** As used in this part, unless the context otherwise requires:³

- (1) By amending the definition of “weight” to read as follows:

““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.”

- (2) By repealing the definition of “commodity in package form”:

[““Commodity in package form” means a commodity put up or packaged in any manner in advance of sale in units suitable for either wholesale or retail sale. An individual item or lot of any commodity not in package form as defined in this section, but on which there is marked a selling price based on an established price per unit of weight or of measure, shall be considered a commodity in package form.

Where the term “package” is used in this chapter, it shall mean “commodity in package form” as here defined.”]

(3) By repealing the definition of “consumer package; package of consumer commodity”:

[““Consumer package; package of consumer commodity” 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 purposes of personal care or in the performance of services ordinarily rendered in or about the household or in connection with personal possessions.”]

(4) By repealing the definition of “measure”:

[““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. When used in connection with any commodity in package form, the term shall mean net measure.”]

(5) By repealing the definition of “national type evaluation program”:

[““National type evaluation program” means a program of cooperation between the National Institute of Standards and Technology, the National Conference on Weights and Measures, the states, and the private sector for determining, on a uniform basis, conformance of a type with the relevant provisions of National Institute of Standards and Technology handbook 44, “Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices”; National Institute of Standards and Technology handbook 105-1, “Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures, Specifications and Tolerances for Field Standard Weights (NIST class F)”; National Institute of Standards and Technology handbook 105-2, “Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures, Specifications and Tolerances for Field Standard Measuring Flask”; or National Institute of Standards and Technology handbook 105-3, “Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures, Specifications and Tolerances for Graduated Neck Type Volumetric Field Standards.””]

(6) By repealing the definition of “package”:

[““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.”]

(7) By repealing the definition of “participating laboratory”:

[““Participating laboratory” means any state measurement laboratory that has been certified by the National Institute of Standards and Technology, in accordance with its program for the certification of capability of state measurement laboratories, to conduct a type evaluation under the national type evaluation program.”]

(8) By repealing the definition of “type”:

[““Type” means a model or models of a particular measurement system, instrument, element, or a field standard that positively identifies the design. A specific type may vary in its measurement ranges, size, performance, and operating characteristics as specified in the certificate of conformance.”]

(9) By repealing the definition of “type evaluation”:

[““Type evaluation” means the testing, examination, or evaluation of a type by a participating laboratory under the national type evaluation program.”]

SECTION 6. Section 486-111, Hawaii Revised Statutes, is amended to read as follows:

“§486-111³ Packages; information required; variations; exemptions. Except as otherwise provided in 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 definite, plain, and conspicuous declarations of:

- (1) The identity of the commodity in the package, unless the commodity can be identified easily through the wrapper or container;
- (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 of net quantity, 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 the board may, by rule, establish reasonable variations from the declared measure and exemptions pertaining to the required declarations.”

SECTION 7. Section 486-112, Hawaii Revised Statutes, is amended to read as follows:

“§486-112³ Declarations of unit price on random packages. In addition to the declarations required by section 486-111, any [commodity in] package [form] that is one of a lot containing random measure of the same commodity and that bears 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.”

SECTION 8. Section 486-113, Hawaii Revised Statutes, is amended to read as follows:

“§486-113³ 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 has been prescribed for the commodity by rule of the board.

For commodities measured by volume and packaged in containers standardized as to capacity or generally recognized by consumers as having a set capacity, the standard of fill shall be equal to that capacity, e.g., the volume of fill in the commonly designed one-gallon jug shall be one gallon.”

SECTION 9. Section 486-114, Hawaii Revised Statutes, is amended to read as follows:

“§486-114³ 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."

SECTION 10. Section 486-116, Hawaii Revised Statutes, is amended to read as follows:

"§486-116³ Misrepresentation of price. Whenever any commodity or service is bought or sold, or is offered, exposed, or advertised for sale or purchase, by weight, measure, or count, the price shall not be misrepresented, nor presented in any manner calculated or tending to mislead or deceive an actual or prospective purchaser or seller. The price of [commodities in package form] packages or commodities sold from bulk, when offered for sale at retail, shall be clearly displayed and shall reflect the retail price at which the public may, without special credentials or other requirements, purchase such packages or 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 and of the same general design and style as the whole numeral or numerals of the price per unit as established by rule of the board."

SECTION 11. Section 486-117, Hawaii Revised Statutes, is amended to read as follows:

"§486-117³ Inspection of packages. (a) 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 they contain the amounts represented and whether they are 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 the representative of the lot.

(b) No person shall:

- (1) Sell, or keep, offer, or expose for sale any package [or amount of commodity in package form] unless the 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; or
- (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

ACT 54

requirements, until written authorization for such disposal has been issued by the administrator.

(c) 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 disposal.

(d) 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 noncompliance when remedial action is not effected as required under the terms of the off sale order; as established by rule of the board."

SECTION 12. Section 486-121, Hawaii Revised Statutes, is amended to read as follows:

"§486-121³ Misrepresentation of quantity. No person shall:

- (1) Sell, offer, or expose for sale less than the quantity represented; [nor
- (2) Take any more than the quantity represented when the buyer furnishes the weight or measure by means of which the quantity is determined[.]; or
- (3) Represent the quantity in any manner calculated to mislead or in any way deceive another person."

SECTION 13. Section 486-122, Hawaii Revised Statutes, is amended to read as follows:

"§486-122³ 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 [or regulation] of the board shall be accompanied by a delivery ticket containing the following information:

- (1) The name and address of the buyer and seller;
- (2) The date delivered;
- (3) 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;
- (4) The unit price, unless otherwise agreed upon by both buyer and seller;
- [(4)] (5) The identity in the most descriptive terms commercially practicable, including any quality representation made in connection with the sale; and
- [(5)] (6) The count of individually wrapped packages, if more than one."

SECTION 14. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 15. This Act shall take effect upon its approval.

(Approved April 26, 1993.)

Notes

1. Prior to amendment "or" appeared here.
2. Should be underscored.
3. So in original.