

By: Holland

To: Agriculture

HOUSE BILL NO. 796  
(As Passed the House)

1 AN ACT TO AMEND SECTION 75-27-3, MISSISSIPPI CODE OF 1972, TO  
2 REVISE DEFINITIONS UNDER THE WEIGHTS AND MEASURES LAW; TO AMEND  
3 SECTION 75-27-19, MISSISSIPPI CODE OF 1972, TO REVISE THE  
4 STANDARDS FOR COMMERCIAL WEIGHING AND MEASURING DEVICES; TO AMEND  
5 SECTION 75-27-51, MISSISSIPPI CODE OF 1972, TO PROVIDE PENALTIES  
6 FOR MISREPRESENTATION OF THE PRICE OF A COMMODITY; AND FOR RELATED  
7 PURPOSES.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

9 SECTION 1. Section 75-27-3, Mississippi Code of 1972, is  
10 amended as follows:[HS1]

11 75-27-3. When used in this article:

12 (1) The word "person" shall be construed to mean both  
13 the plural and singular, as the case demands, and shall include  
14 individuals, partnerships, corporations, companies, societies, and  
15 associations.

16 (2) The words "weight(s) and (or) measure(s)" shall be  
17 construed to mean all weights and measures of every kind, all  
18 instruments and devices and all electronic systems that employ a  
19 laser bar code reader to retrieve product identity, price and  
20 other information stored in computer memory, for weighing and  
21 measuring, or in the computing of any basic charge or payment for  
22 products bought or services rendered on the basis of weight or  
23 measure or count and any appliances and accessories associated  
24 with any or all such instruments and devices, except that the term  
25 shall not be construed to include meters for the measurement of  
26 electricity, gas, or water when the same are operated in a public  
27 utility system, \* \* \* or production from oil and gas wells under  
28 the supervision of the State Oil and Gas Board. Such electricity,

29 gas and water \* \* \* are hereby specifically excluded from the  
30 purview of this article, and none of the provisions of this  
31 article shall be construed to apply to such meters or to any  
32 appliances or accessories associated therewith.

33 (3) The words "sell" and "sale" shall be construed to  
34 mean barter and exchange.

35 (4) The term "director" and "deputy director" shall be  
36 construed to mean, respectively, the State Director of Weights and  
37 Measures, who shall be the Commissioner of Agriculture and  
38 Commerce, and the Deputy State Director of Weights and Measures,  
39 who shall serve as the administrator.

40 (5) The term "inspector" shall be construed to mean a  
41 state inspector of weights and measures.

42 (6) The term "intrastate commerce" shall be construed  
43 to mean any and all commerce or trade that is begun, carried on,  
44 and completed wholly within the limits of the State of  
45 Mississippi, and the phrase "introduced into intrastate commerce"  
46 shall be construed to define the time and place at which the first  
47 sale and delivery of a commodity is made within the state, and  
48 delivery being made either directly to the purchaser or to a  
49 common carrier for shipment to the purchaser.

50 (7) The term "commodity in package form" shall be  
51 construed to mean commodity put up or packaged in any manner in  
52 advance of sale in units suitable for either wholesale or retail  
53 sale, exclusive, however, of an auxiliary shipping container  
54 enclosing packages that individually conform to the requirements  
55 of this article. An individual item or lot of any commodity not  
56 in package form as defined in this section, but on which there is  
57 marked a selling price based on an established price per unit of  
58 weight or of measure, shall be construed to be commodity in  
59 package form.

60 (8) The term "Handbook 44" shall be construed to mean  
61 the National Institute of Standards and Technology Handbook 44,  
62 "Specifications, Tolerances, and Other Technical Requirements for  
63 Weighing and Measuring Devices."

64 SECTION 2. Section 75-27-19, Mississippi Code of 1972, is  
65 amended as follows:

66           75-27-19. The director shall have power to prescribe, after  
67 public hearing following due public notice, and issue reasonable  
68 regulations for the enforcement of this article, which regulations  
69 shall have the force and effect of law. These regulations may  
70 include (1) standards of net weight, measure, or count, and  
71 reasonable standards of fill, for any commodity in package form,  
72 (2) rules governing the technical and reporting procedures to be  
73 followed and the report and record forms and marks of approval and  
74 rejection to be used by inspectors of weights and measures in the  
75 discharge of their official duties, and (3) exemptions from the  
76 sealing or marking requirements of Section 75-27-31 with respect  
77 to weights and measures of such character or size that such  
78 sealing or marking would be inappropriate, impracticable, or  
79 damaging to the apparatus in question. These regulations shall  
80 include specifications, tolerances, and regulations for weights  
81 and measures of the character of those specified in Section  
82 75-27-23, designed to eliminate from use, without prejudice to  
83 apparatus that conforms as closely as practicable to the official  
84 standards, those (1) that are not accurate, (2) that are of such  
85 construction that they are faulty--that is, that are not  
86 reasonably permanent in their adjustment or will not repeat their  
87 indications correctly, or (3) that facilitate the perpetration of  
88 fraud. The specifications, tolerances, and regulations for  
89 commercial weighing and measuring devices, together with  
90 amendments thereto, as recommended by the National Institute of  
91 Standards and Technology and published in the National Institute  
92 of Standards and Technology Handbook 44 and supplements thereto,  
93 or in any publication revising or superseding Handbook 44, shall  
94 be the specifications, tolerances, and regulations for commercial  
95 weighing and measuring devices of the State of Mississippi, except  
96 insofar as specifically modified, amended, or rejected by a  
97 regulation issued by the director. For the purposes of this  
98 article, apparatus shall be deemed to be "correct" when it

99 conforms to all applicable requirements promulgated as specified  
100 in this section; other apparatus shall be deemed to be  
101 "incorrect." The division shall levy no charges or fees for the  
102 field tests or inspections made under this article; however, the  
103 director shall adopt a schedule of fees for calibration and  
104 testing services provided by the State Metrology Laboratory. Fees  
105 collected for such calibration and testing shall be deposited in  
106 the State Treasury in the special fund for the Department of  
107 Agriculture and Commerce. The director shall require persons  
108 installing scales with a weight capacity of ten thousand (10,000)  
109 pounds or more to secure a permit for each such scale installed,  
110 establish a fee not to exceed Fifty Dollars (\$50.00) for such  
111 permit and require such person to supply the director with scale  
112 and scale foundation blueprints and specifications for each  
113 installation before installation of the scale. Applications for  
114 permit shall be made on forms prescribed and furnished by the  
115 director. The director shall establish and adopt scale pit and  
116 approach specifications for scales with a capacity of ten thousand  
117 (10,000) pounds or more. However, weighing devices with a  
118 capacity of ten thousand (10,000) pounds or more used to weigh  
119 road construction materials shall be exempt from the requirements  
120 of this article. Such weighing devices for road construction  
121 materials shall have a tolerance of one-half of one percent (1/2  
122 of 1%) in lieu of the requirements of Handbook 44 and shall be  
123 regulated by the Mississippi Department of Transportation instead  
124 of the Department of Agriculture and Commerce. For purposes of  
125 this section, the term "road construction materials" shall  
126 include, but not be limited to, sand, gravel, asphalt, fill dirt,  
127 topsoil and concrete. The term "road construction materials"  
128 shall not include timber or timber products.

129 SECTION 3. Section 75-27-51, Mississippi Code of 1972, is  
130 amended as follows:[HS2]

131 75-27-51. Whenever any commodity or service is sold, or is

132 offered, exposed, or advertised for sale, by weight, measure, or  
133 count, the price shall not be misrepresented, nor shall the price  
134 be represented in any manner calculated or tending to mislead or  
135 deceive an actual or prospective purchaser. Whenever an  
136 advertised, posted, or labeled price per unit of weight, measure,  
137 or count includes a fraction of a cent, all elements of the  
138 fraction shall be prominently displayed and the numeral or  
139 numerals expressing the fraction shall be immediately adjacent to,  
140 of the same general design and style as, and at least one-half  
141 (1/2) the height and width of the numerals representing the whole  
142 cent; provided, however, the provisions of this section shall not  
143 apply to signs and requirements enumerated in Section 75-55-9,  
144 Mississippi Code of 1972.

145 Any person who shall be found guilty of the misrepresentation  
146 of the price of a commodity or the representation of a price in  
147 any manner calculated or tending to mislead or deceive an actual  
148 or prospective purchaser shall be assessed a civil penalty by the  
149 director or his designee in the amount of not less than One  
150 Hundred Dollars (\$100.00) for the first offense and not less than  
151 One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars  
152 (\$500.00) for each subsequent offense. Each violation shall  
153 constitute a separate offense. The commissioner or his designee  
154 shall afford such person an opportunity for a hearing to show  
155 cause why such penalty should not be assessed.

156 SECTION 4. This act shall take effect and be in force from  
157 and after July 1, 2000.