

By: Representative Wilson (By Request)

To: Agriculture

HOUSE BILL NO. 1270

1 AN ACT TO AMEND SECTION 75-27-3, 75-27-19, 75-27-23 AND
 2 75-27-41, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE DEPARTMENT OF
 3 AGRICULTURE AND COMMERCE TO REVISE THE MANNER BY WHICH CORN MAY BE
 4 SOLD TO INCLUDE SALES BY WEIGHT OR VOLUME; TO AUTHORIZE THE USE OF
 5 VENDING MACHINES WHICH DISPENSE AGRICULTURAL COMMODITIES BY WEIGHT
 6 OR FOR USE IN THE STATE; TO EXEMPT SUCH MACHINES FROM THE
 7 REQUIREMENTS OF CERTAIN CERTIFICATION FOR PURPOSE OF OPERATING IN
 8 THE STATE; AND FOR RELATED PURPOSES.

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

10 **SECTION 1.** Section 75-27-3, Mississippi Code of 1972, is
 11 amended as follows:

12 75-27-3. When used in this article:

13 (* * *a) The word "person" means both the plural and
 14 singular, as the case demands, and includes individuals,
 15 partnerships, corporations, companies, societies, and
 16 associations.

17 (* * *b) The words "weight(s) and (or) measure(s)"
 18 means all weights and measures of every kind, all instruments and
 19 devices and all electronic systems that employ a laser bar code
 20 reader to retrieve product identity, price and other information
 21 stored in computer memory, for weighing and measuring, or in the



22 computing of any basic charge or payment for products bought or
23 services rendered on the basis of weight or measure or count and
24 any appliances and accessories associated with such instruments
25 and devices, except that the term does not include meters for the
26 measurement of electricity, gas, or water when the meters are
27 operated in a public utility system, or production from oil and
28 gas wells under the supervision of the State Oil and Gas Board.
29 Such electricity, gas, and water meters are hereby specifically
30 excluded from this article, and none of the provisions of this
31 article shall apply to such meters or to any appliances or
32 accessories associated with them.

33 (* * *c) The words "sell" and "sale" means barter and
34 exchange.

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

40 (* * *e) The term "inspector" means a state inspector
41 of weights and measures.

42 (* * *f) The term "intrastate commerce" means any and
43 all commerce or trade that is begun, carried on, and completed
44 wholly within the limits of the State of Mississippi, and the
45 phrase "introduced into intrastate commerce" shall be construed to
46 define the time and place at which the first sale and delivery of



47 a commodity is made within the state, and delivery being made
48 either directly to the purchaser or to a common carrier for
49 shipment to the purchaser.

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

59 (* * *h) The term "Handbook 44" means the National
60 Institute of Standards and Technology Handbook 44,
61 "Specifications, Tolerances, and Other Technical Requirements for
62 Weighing and Measuring Devices."

63 (i) The term "vending machine" means a freestanding
64 machine that stores and dispenses agricultural commodities for a
65 price upon demand of a customer and without an attendant, that:

66 (i) Allows the sale of a commodity by weight in
67 pound or a measure which is clearly indicated thereon;

68 (ii) Accepts cash or credit or debit cards as a
69 medium of exchange and has the price per unit of weight or measure
70 clearly indicated thereon;



71 (iii) Satisfies all applicable building,
72 electrical and fire code requirements;
73 (iv) Makes the sale of all product dispensed
74 therefrom subject to all applicable state and local taxes;
75 (v) Clearly and visibly displays the name and
76 contact information of the owner or operator, including a
77 telephone number; and
78 (vi) Is routinely inspected by the Mississippi
79 Department of Agriculture and Commerce to ensure accuracy of its
80 weights and measure, but shall be exempt from the certification
81 requirements of the National Conference of Weights and Measures
82 and the National Type Evaluation Program (NTEP).

83 **SECTION 2.** Section 75-27-19, Mississippi Code of 1972, is
84 amended as follows:

85 75-27-19. The director may adopt, amend or repeal
86 regulations for the enforcement of this article, which regulations
87 shall have the force and effect of law. These regulations may
88 include (1) standards of net weight, measure or count, and
89 reasonable standards of fill, for any commodity in package form,
90 (2) rules governing the technical and reporting procedures to be
91 followed and the report and record forms and marks of approval and
92 rejection to be used by inspectors of weights and measures in the
93 discharge of their official duties, and (3) exemptions from the
94 sealing or marking requirements of Section 75-27-31 with respect
95 to weights and measures of such character or size that such



96 sealing or marking would be inappropriate, impracticable, or
97 damaging to the apparatus in question. These regulations shall
98 include specifications, tolerances and regulations for weights and
99 measures of the character of those specified in Section 75-27-23,
100 designed to eliminate from use, without prejudice to apparatus
101 that conforms as closely as practicable to the official standards,
102 those (1) that are not accurate, (2) that are of such construction
103 that they are faulty--that is, that are not reasonably permanent
104 in their adjustment or will not repeat their indications
105 correctly, or (3) that facilitate the perpetration of fraud. The
106 specifications, tolerances and regulations for commercial weighing
107 and measuring devices or vending machines, together with
108 amendments thereto, as recommended by the National Institute of
109 Standards and Technology and published in Handbook 44 and
110 supplements thereto, or in any publication revising or superseding
111 Handbook 44, shall be the specifications, tolerances, and
112 regulations for commercial weighing and measuring devices or
113 vending machines of the State of Mississippi, except insofar as
114 specifically modified, amended or rejected by a regulation issued
115 by the director. For the purposes of this article, apparatus
116 shall be deemed to be "correct" when it conforms to all applicable
117 requirements promulgated as specified in this section; other
118 apparatus shall be deemed to be "incorrect." The division shall
119 levy no charges or fees for the field tests or inspections made
120 under this article; however, the director shall adopt a schedule



121 of fees for calibration and testing services provided by the State
122 Metrology Laboratory. Fees collected for such calibration and
123 testing shall be deposited in the State Treasury in the special
124 fund for the Department of Agriculture and Commerce. The director
125 shall require persons installing scales with a weight capacity of
126 ten thousand (10,000) pounds or more to secure a permit for each
127 such scale installed, establish a fee not to exceed Fifty Dollars
128 (\$50.00) for such permit and require such person to supply the
129 director with scale and scale foundation blueprints and
130 specifications for each installation before installation of the
131 scale. Applications for permit shall be made on forms prescribed
132 and furnished by the director. The director shall establish and
133 adopt scale pit and approach specifications for scales with a
134 capacity of ten thousand (10,000) pounds or more. However,
135 weighing devices with a capacity of ten thousand (10,000) pounds
136 or more used to weigh road construction materials shall be exempt
137 from the requirements of this article. Such weighing devices for
138 road construction materials shall have a tolerance of one-half of
139 one percent (1/2 of 1%) in lieu of the requirements of Handbook 44
140 and shall be regulated by the Mississippi Department of
141 Transportation instead of the Department of Agriculture and
142 Commerce. For purposes of this section, the term "road
143 construction materials" shall include, but not be limited to,
144 sand, gravel, asphalt, fill dirt, topsoil and concrete. The term



145 "road construction materials" shall not include timber or timber
146 products.

147 **SECTION 3.** Section 75-27-23, Mississippi Code of 1972, is
148 amended as follows:

149 75-27-23. When not otherwise provided by law, the director
150 shall have the power to inspect and test, to ascertain if they are
151 correct, all weights and measures kept, offered, or exposed for
152 sale or purchase. It shall be the duty of the director within a
153 twelve-month period, or less frequently if in accordance with a
154 schedule issued by him, and as much oftener as he may deem
155 necessary to inspect and test, to ascertain if they are correct,
156 all weights and measures commercially used (1) in determining the
157 weight, measurement or count of commodities or things sold or
158 purchased, or offered or exposed for sale or purchase, on the
159 basis of weight, measure, or of count, or (2) in computing the
160 basic charge or payment for services rendered on the basis of
161 weight, measure, or of count. Provided, that with respect to
162 single-service devices - that is, devices designed to be used
163 commercially only once and to be then discarded - and with respect
164 to devices uniformly mass-produced, as by means of a mold or die,
165 and not susceptible of individual adjustment, tests may be made on
166 representative samples of such devices; and the lots of which such
167 samples are representative shall be held to be correct or
168 incorrect upon the basis of the results of the inspections and
169 tests on such samples.



170 The manufacturer or distributor of any weighing device(s)
171 offered for sale, sold, installed for commercial use or used
172 commercially in this state shall subject such device to type
173 evaluation testing by the National Type Evaluation Program (NTEP),
174 National Institute of Standards and Technology (NIST), except such
175 evaluation testing shall not apply vending machines which disburse
176 commodities. Any weighing device not covered by a certificate of
177 conformance or exempted from the requirement of a certificate of
178 conformance from such agency shall not be used commercially in
179 this state.

180 **SECTION 4.** Section 75-27-41, Mississippi Code of 1972, is
181 amended as follows:

182 75-27-41. Except as otherwise provided in this article, any
183 commodity in package form introduced or delivered for introduction
184 into or received in intrastate commerce, kept for the purpose of
185 sale, or offered or exposed for sale in intrastate commerce shall
186 bear on the outside of the package a definite, plain, and
187 conspicuous declaration of (1) the identity of the commodity in
188 the package unless the same can easily be identified through the
189 wrapper or container, (2) the net quantity of the contents in
190 terms of weight, measure, or count, and (3) in the case of any
191 package kept, offered, or exposed for sale, or sold any place
192 other than on the premises where packed or sold from a vending
193 machine, the name and place of business of the manufacturer,
194 packer, or distributor. Provided, that in connection with the



195 declaration required under clause (2), neither the qualifying term
196 "when packed" or any words of similar import shall be used.
197 Provided further, that under clause (2) the director shall, by
198 regulation, establish (a) reasonable variations to be allowed,
199 which shall include variations below the declared weight or
200 measure caused by ordinary and customary exposure, only after the
201 commodity is introduced into intrastate commerce, to conditions
202 that normally occur in good distribution practice and that
203 unavoidably result in decreased weight or measure, (b) exemptions
204 as to small packages, and (c) exemptions as to commodities put up
205 in variable weights or sizes for sale intact and either
206 customarily not sold as individual units or customarily weighed or
207 measured at time of sale to the consumer.

208 **SECTION 5.** This act shall take effect and be in force from
209 and after July 1, 2018.

