

By: Stogner

To: Agriculture

SENATE BILL NO. 2622
(As Passed the Senate)

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" * * * means both the plural and
13 singular, as the case demands, and * * * includes individuals,
14 partnerships, corporations, companies, societies, and
15 associations.

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

29 meters are hereby specifically excluded from * * * this article,
30 and none of the provisions of this article shall * * * apply to
31 such meters or to any appliances or accessories associated with
32 them.

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

35 (4) 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 (5) The term "inspector" * * * means a state inspector
41 of weights and measures.

42 (6) 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 (7) 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 (8) The term "Handbook 44" means the National Institute of
60 Standards and Technology Handbook 44, "Specifications, Tolerances,
61 and Other Technical Requirements for Weighing and Measuring
62 Devices."

63 SECTION 2. Section 75-27-19, Mississippi Code of 1972, is
64 amended as follows:[CRG2]

65 75-27-19. The director shall have power to prescribe, after

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

"incorrect." The division shall levy no charges or fees for the field tests or inspections made under this article; however, the director shall adopt a schedule of fees for calibration and testing services provided by the State Metrology Laboratory. Fees collected for such calibration and testing shall be deposited in the State Treasury in the special fund for the Department of Agriculture and Commerce. The director shall require persons installing scales with a weight capacity of ten thousand (10,000) pounds or more to secure a permit for each such scale installed, establish a fee not to exceed Fifty Dollars (\$50.00) for such permit and require such person to supply the director with scale and scale foundation blueprints and specifications for each installation before installation of the scale. Applications for permit shall be made on forms prescribed and furnished by the director. The director shall establish and adopt scale pit and approach specifications for scales with a capacity of ten thousand (10,000) pounds or more. However, weighing devices with a capacity of ten thousand (10,000) pounds or more used to weigh road construction materials shall be exempt from the requirements of this article. Such weighing devices for road construction materials shall have a tolerance of one-half of one percent (1/2 of 1%) in lieu of the requirements of Handbook 44 and shall be regulated by the Mississippi Department of Transportation instead of the Department of Agriculture and Commerce. For purposes of this section, the term "road construction materials" shall include, but not be limited to, sand, gravel, asphalt, fill dirt, topsoil and concrete. The term "road construction materials" shall not include timber or timber products.

SECTION 3. Section 75-27-51, Mississippi Code of 1972, is amended as follows:[HS3]

75-27-51. Whenever any commodity or service is sold, or is offered, exposed, or advertised for sale, by weight, measure, or count, the price shall not be misrepresented, nor shall the price

be represented in any manner calculated or tending to mislead or deceive an actual or prospective purchaser. Whenever an advertised, posted, or labeled price per unit of weight, measure, or count includes a fraction of a cent, all elements of 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, and at least one-half (1/2) the height and width of the numerals representing the whole cent; provided, however, the provisions of this section shall not apply to signs and requirements enumerated in Section 75-55-9, Mississippi Code of 1972. A person who is found guilty of the misrepresentation of the price of a commodity or the representation of a price in any manner calculated or tending to mislead or deceive an actual or prospective purchaser shall be assessed a civil penalty by the director or his designee in the amount of not less than One Hundred Dollars (\$100.00) for the first offense and not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00) for each subsequent offense. Each violation shall constitute a separate offense. The commissioner or his designee shall afford the person an opportunity for a hearing to show cause why the penalty should not be assessed.

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