

**CHAPTER 486 [OLD]**  
**MEASUREMENT STANDARDS AND UNIFORM PACKAGING**  
**AND LABELING**

**REPEALED.** L 1988, c 156, §2.

**CHAPTER 486**  
**MEASUREMENT STANDARDS**

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## "PART I. GENERAL PROVISIONS

### Note

Part heading amended by L 1991, c 153, §8.

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

"Administrator" means the administering officer of the quality assurance division, or any qualified person so designated by the chairperson.

"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 conformance" means a document issued by the National Institute of Standards and Technology based on testing in participating laboratories and constitutes evidence of conformance of a type with the requirements of National Institute of Standards and Technology handbooks 44, 105-1, 105-2, or 105-3.

"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.

"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" or "package of consumer commodity" means a package 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.

"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".

"Craft item" means any consumer commodity that is not an agricultural commodity or a perishable consumer commodity that is manufactured, assembled, fabricated, or produced by an individual working alone or a small group of individuals working collaboratively and that is produced by hand or by using simple tools. Craft item does not include a consumer commodity that is

mass-produced or an item that is merely assembled from two or more mass-produced consumer commodities.

"Department" means department of agriculture.

"Incorrect" means to be in noncompliance with any specification, tolerance, performance criteria, standard, or any part of this chapter or any rule adopted under it.

"Inspector" means any employee or official of the department authorized by the board to administer and enforce the provisions of this law.

"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, 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.

"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.

"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.

"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:

- (1) False, incomplete, incorrect, or misleading labeling;

- (2) Misrepresentation as to the identity, quantity, quality, or point of origin;
- (3) Misrepresentation as to the principal place of business of the manufacturer, packer, or distributor;
- (4) 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;
- (5) Misrepresentation as to originality or creativity;
- (6) Misrepresentation of the consumer commodity as an imitation of another or as an imitation of a generic product; and
- (7) Misrepresentation in any other manner tending to confuse the prospective purchaser.

"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.

"Perishable consumer commodity" means any article, product, good, or agricultural commodity of any kind that is customarily produced or distributed for sale through mercantile or retail sales outlets; is intended for consumption as food 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; and is intended to have a limited shelf life. "Perishable consumer commodity" includes, but is not limited to, baked goods, dairy products, cut or dried flowers, coffee, candy, cookies, jam, jelly, juices, oils, nuts, or similar products.

"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.

"Retail" means sale to the final consumer.

"Sell" and "sale" include barter and exchange.

"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.

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

"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.

"Type evaluation" means the testing, examination, or evaluation of a type by a participating laboratory under the national type evaluation program. [L 1988, c 156, pt of §3; am L 1991, c 153, §9; am L 1993, c 54, §1; am L 1997, c 163, §1; am L 1998, c 192, §1; am L 2009, c 80, §1]

### **Cross References**

Bottled water labeling requirements, see §328D-6.

Gold and silver stamping, see chapter 482D.

Plastic container coding, see §§342H-41, 42.

Trademarks, unlawful use, see chapter 482.

Water treatment units, see chapter 481H.

" **§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. [L 1988, c 156, pt of §3]

" **§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. [L 1988, c 156, pt of §3]

" **§486-4 Measurement standards branch; administrator.** There shall be a measurement standards branch within the department. The administrator shall enforce the board's rules and administer the branch and such technical and clerical personnel as are necessary to carry out this chapter, in accord with the power, authority and duties delegated by the board. [L 1988, c 156, pt of §3; am L 1991, c 153, §10; am L 1997, c 163, §2]

" **§486-5 Powers and duties of the administrator, and inspectors.** The administrator may delegate any of the administrator's 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. [L 1988, c 156, pt of §3; gen ch 1992]

" **§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 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. [L 1988, c 156, pt of §3; am L 1991, c 153, §11]

" **§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 or 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 package;
- (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;
- (11) Definitions, applicability, use, units, standards, and tolerances relating to the International System of Units; and
- (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) The specifications, tolerances, and other technical requirements for measuring devices 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 and adopted, or amended and adopted by the board pursuant to chapter 91, shall be the basis for measurement standards in 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 International Bureau of Weights and Measures, and the Society of Automotive Engineers, among others. [L 1988, c 156, pt of §3; am L 1991, c 153, §12; am L 1993, c 54, §2]

" **§§486-8 to 22 REPEALED.** L 1991, c 153, §§23 to 37.

" **§486-23 Investigations; power to subpoena.** The administrator shall investigate complaints deemed appropriate and advisable to develop information on prevailing procedures in commercial quantity determination and on possible violations of this chapter and to promote the general objective of accuracy in the determination and representation of quantity in commercial transactions. In the course of any investigation, the administrator is empowered to subpoena witnesses, examine them under oath, and require the production of books, papers, documents, records, or objects which the administrator deems relevant or material to the inquiry. Upon application by the administrator, compliance with the subpoena may be enforced by the circuit court in the county where the person subpoenaed resides or is found in the same manner as a subpoena issued by the clerk of a circuit court. In addition, the administrator may conduct hearings in aid of any investigation or inquiry. [L 1988, c 156, pt of §3; am L 1991, c 153, §13]

" **§486-24 Stop-use, stop-sale, hold, and removal orders.** The administrator may issue citations and, incident thereto, stop-use, hold, and removal orders with respect to measures and measurement standards being, or susceptible of being, unlawfully used; and issue citations and, incident thereto, stop-sale, hold and removal orders with respect to packages or consumer commodities 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 packages or consumer commodities do not comply with this chapter or the rules adopted thereunder, and no person shall use, sell, 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, stop-sale, hold, or removal order

issued under this section. [L 1988, c 156, pt of §3; am L 1991, c 153, §14]

" **§§486-25, 26, 26.5, 27, 28 REPEALED.** L 1991, c 153, §§38 to 42.

" **§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 of this State in the performance of the inspector's, officer's, or employee's official duties prescribed by this chapter or any rule adopted under this chapter, shall be guilty of a misdemeanor.

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 or order adopted or issued pursuant to this chapter, any money or other thing of value, with intent to influence the inspector, or other officer or employee of this State, in the discharge of any duty herein provided for, shall be guilty of a misdemeanor.

Any inspector or other officer or employee of the State authorized to perform any of the duties prescribed by this chapter or any rule adopted under it 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 guilty of a misdemeanor. [L 1988, c 156, pt of §3; am L 1991, c 153, §15]

" **§486-30 Forgery; penalties.** Any person who shall forge any official device, seal, or mark, shall be guilty of a misdemeanor. [L 1988, c 156, pt of §3; am L 1991, c 153, §16]

" **§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 this chapter, including rules adopted thereunder, take the name, address, and any other pertinent information of the person and issue the person a citation and notice to appear, printed in the form hereinafter described, and answer to the charge against the person 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 this chapter and the rules adopted thereunder by the board, which does not mandate the taking into

custody of such violators. 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 consistent with the provisions 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.

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 the inspector 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 are located, provided that, when competent authority objects to the entry, a warrant shall be obtained prior to entry.

When a complaint is made to any prosecuting officer of the violation of any of the parts of this chapter 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 oaths and, upon probable cause, the court may issue a warrant for the violator. [L 1988, c 156, pt of §3; am L 1991, c 153, §17]

" **§486-32 Offenses and penalties.** (a) Criminal. Any person who performs any one of the acts enumerated in this subsection shall be guilty of a misdemeanor:

- (1) Use or have in possession a device or measure or measurement standard which has been altered to facilitate fraud;
- (2) Counterfeit, or remove from any measure or measurement standard, any tag, seal, or mark placed thereon by the appropriate authority; or

(3) Manipulate in any manner the representation of the quantity of any commodity, thing, or service furnished, delivered, or provided to the unjust enrichment of the person.

(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;
- (5) Fail to submit a weighing or measuring device for inspection and testing at a time and place specified by the administrator; or
- (6) Violate any provision of this chapter or any rules adopted under it for which a specific penalty has not been prescribed. [L 1988, c 156, pt of §3; am L 1991, c 153, §18; am L 1993, c 54, §3]

" **§486-33 Injunction.** In addition to any other remedy by law provided, the chairperson 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. [L 1988, c 156, pt of §3; gen ch 1992]

### **Rules of Court**

Injunctions, see HRCF rule 65.

" **§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. [L 1988, c 156, pt of §3]

" **§486-35 REPEALED.** L 1991, c 153, §43.

" **§486-36 Remedies.** Notwithstanding other penalties provided in this chapter, including but not limited to penalties provided under section 486-32, the board may enforce this chapter in both administrative and judicial proceedings:

- (1) Administrative. If the administrator determines that any person is violating any provision of this chapter or any rule adopted thereunder, or any variance or exemption or waiver issued pursuant thereto, the administrator may have that person served with a notice of violation and an order. The notice shall specify the alleged violation. The order may require that the alleged violator do any or all of the following:
  - (A) Cease and desist from the violation;
  - (B) Pay an administrative penalty not to exceed \$2,000 for each day of violation;
  - (C) Correct the violation at the alleged violator's own expense; or
  - (D) Appear before the board at a time and place specified in the order and answer the charges complained of.

The order shall become final twenty calendar days after service unless within those twenty calendar days the alleged violator requests in writing a hearing before the board. Upon such request the board shall specify a time and place for the alleged violator to appear. After a hearing pursuant to this paragraph, the board may affirm, modify, or rescind the order as appropriate.

Factors to be considered in imposing the administrative penalty may include the nature and history of the violation and any prior violation and the opportunity, difficulty, and history of corrective action. It is presumed that the violator's economic and financial conditions allow payment of the penalty and the burden of proof to the contrary is on the violator; and

- (2) Judicial. The board may institute a civil action in any court of competent jurisdiction for the enforcement of any order issued pursuant to this section. In any judicial proceeding to enforce the

administrative penalty imposed pursuant to this chapter, the board shall be required to show that:

- (A) Notice was given;
- (B) A hearing was held or the time granted for requesting a hearing had expired without such a request;
- (C) The administrative penalty was imposed; and
- (D) The penalty imposed remains unsatisfied.

The board may also institute a civil action in any court of competent jurisdiction for injunctive relief to enjoin violation of any order issued or rule adopted pursuant to this chapter, in addition to any other remedy or penalty provided for under this chapter. [L 1991, c 153, §2; am L 1998, c 192, §2; am L 2005, c 22, §34]

" **[§486-37] Rules; severability and continuation.** (a) If any provision of the rules adopted under this chapter is declared invalid, or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of the rules and the applicability thereof to other persons and circumstances shall not be affected thereby.

(b) Except as specifically excepted, all rules currently in effect, as they relate to this chapter, shall remain in effect until they are updated, amended, or repealed. [L 1991, c 153, §3]

## "PART II. PETROLEUM PRODUCT ACCOUNTING AND INSPECTION

### Note

Part heading amended by L 1991, c 153, §19.

### Cross References

Petroleum industry information reporting act, see chapter 486J.

**§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 byproduct 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. [L 1988, c 156, pt of §3]

" **§486-51 Applicability.** (a) Petroleum products accounting 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.

(b) Petroleum products inspection shall apply to all petroleum products kept, offered, or exposed for sales. [L 1988, c 156, pt of §3; am L 1991, c 153, §20]

" **§486-52 Measurement standard.** (a) Any petroleum product which is in a liquid state under conditions of seven hundred sixty 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.

(c) Any device required to automatically compensate for temperature shall only apply to metered sales of liquid petroleum products that have a rated capacity of two hundred gallons per minute or more; provided that whenever a partial compartment or partial tank truck load is delivered, it shall be delivered through a meter that meets the requirements specified in rules adopted by the department. [L 1988, c 156, pt of §3; am L 1995, c 146, §2]

" **[\$486-52.5] Price posting by gallon required.** The director shall adopt rules to require any retail dispenser of gasoline, whose variator price is set in liters, for every grade of gasoline sold, to post on top or on the face panel of each gasoline pump and on any other pricing advertisement in conspicuous numbers comparable in size to any other posted price, the price per United States gallon for the gasoline dispensed. If the variator price is set in gallons, no liter price posting or advertisement shall be required. Nothing in this section shall be deemed to require that gasoline be sold by the gallon. [L 1988, c 388, §1]

" **§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. [L 1988, c 156, pt of §3]

" **§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. [L 1988, c 156, pt of §3]

" **[\$486-55] General duties and powers.** The board may:

- (1) Enforce and administer this part by inspections, analyses, and other appropriate actions;
- (2) Have access during normal business hours to all places where petroleum products are marketed or being held for the purpose of examination, inspection, taking of samples, and investigation. If such access is refused by the owner or agent or other persons leasing the same, the board or its agent may obtain a search warrant from a court of competent jurisdiction;
- (3) Collect, or cause to be collected, samples of petroleum products marketed or being held in this State, and cause such samples to be tested or analyzed for compliance with this part; and
- (4) Issue a stop-sale order for any petroleum product found not to be in compliance and remand said stop-sale order if the petroleum product is brought into full compliance with this part. [L 1991, c 153, §4]

" **§486-56 Adoption of standards and rules.** The standards as published by the American Society for Testing and Materials (ASTM) and the Society of Automotive Engineers (SAE) are adopted except as amended or modified by rule of the board pursuant to chapter 91. The board may also adopt rules on the advertising, labeling, standards for, handling, storing, dispensing, and selling of petroleum products. Notwithstanding the foregoing, rules adopted by the board referring to ASTM D4814, relating to standard specification for automotive spark-ignition engine fuel, shall be deemed to refer to version ASTM D4814-13b adopted in 2013, as modified by the National Institute of Standards and Technology Handbook 130, part IV, subpart G, section 2.1 adopted in 2013. [L 1991, c 153, §5; am L 2014, c 64, §1]

### "PART III. ODOMETERS

#### Note

Part heading amended by L 1991, c 153, §21.

**§486-70 REPEALED.** L 1991, c 153, §44.

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

"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 for up to twelve passengers (excluding the driver), not exceeding 16,000 pounds gross vehicle weight. [L 1988, c 156, pt of §3; am L 1991, c 153, §22]

" **§§486-72 to 74 REPEALED.** L 1991, c 153, §§45 to 47.

" **§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. [L 1988, c 156, pt of §3]

" **§486-76 REPEALED.** L 1991, c 153, §48.

" **§486-77 Odometers; prohibitions; exemptions.** (a) It shall be unlawful to:

- (1) Tamper with an odometer, installed in a passenger car, for any purpose. This paragraph 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, or 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; or
  - (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. [L 1988, c 156, pt of §3; am L 2008, c 19, §53]

" **§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. [L 1988, c 156, pt of §3]

" **§486-79 Citation and notice to appear.** 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. [L 1988, c 156, pt of §3; am L 2008, c 19, §54]

" **§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. [L 1988, c 156, pt of §3]

" **§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. [L 1988, c 156, pt of §3]

" **§486-82 Nonscheduled 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. [L 1988, c 156, pt of §3]

" **§486-83 Scheduled inspection.** The administrator or any authorized inspector may schedule odometer system inspection for passenger cars at a designated time and place. Failure to move or present the passenger cars as directed or scheduled shall be a violation of this part. [L 1988, c 156, pt of §3]

" **§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. [L 1988, c 156, pt of §3]

" **§§486-85, 86 REPEALED.** L 1991, c 153, §§49, 50.

" **§486-87 Penalties.** Any person guilty of committing any of the prohibited acts or omitting any of the required acts of this part shall be guilty of a misdemeanor. [L 1988, c 156, pt of §3; am L 1993, c 54, §4]

**"PART IV. BREAD WEIGHT--REPEALED**

**§§486-88 to 91 REPEALED.** L 1991, c 153, §51.

**"[PART V.] MEASUREMENT STANDARDS, UNIFORM  
PACKAGING AND LABELING**

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

"Net weight" means:

- (1) As applied to commodities, the weight of a commodity excluding any materials, substances, or items not considered to be part of the commodity. Materials, substances, or items not considered to be part of the commodity include, but are not limited to, containers, conveyances, bags, wrappers, packaging materials, labels, individual piece covering, decorative accompaniments, and coupons.
- (2) As applied to services, materials considered to be part of a service may or may not include packaging materials, depending upon the type of service that is being purchased. It shall in no instance include the weight of the conveyance used to transport goods if the service is transportation of goods.

"Sale from bulk" means sale of commodities or services when the quantity is determined at the time of sale.

"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. [L 1991, c 153, pt of §6; am L 1993, c 54, §5]

" **[§486-102] Systems of measurement.** The United States customary system of weights and measures and the metric system of measurement are jointly recognized, and either one or both shall be used 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 Institute of Standards and Technology 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. [L 1991, c 153, pt of §6]

" **§486-103 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 Institute of Standards and Technology or other appropriate agency and shall be maintained in such calibration as is prescribed by that bureau or agency by the laboratory of the state measurement standards branch. They shall not be removed from that laboratory except upon request of the National Institute of Standards and Technology or other appropriate agency for calibration audit, provided that they may be relocated for the convenience of the State by directive of the governor. [L 1991, c 153, pt of §6; am L 1998, c 192, §5]

" **§486-104 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 upon their initial receipt and at least once a year thereafter by comparison with:

- (1) The state standards; or
- (2) Upon written authorization of the administrator, suitable standards of another laboratory that is recognized or accredited by the National Institute of Standards and Technology as capable of providing traceable measurements at the level of accuracy and precision necessary to verify the secondary standards and equipment. [L 1991, c 153, pt of §6; am L 2001, c 31, §1]

" **§486-105 General testing.** (a) Unless otherwise provided by law, the department, through the measurement standards branch, 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:

- (1) Determining the measurement of commodities or things sold, or offered or exposed for sale, on the basis of measure;
- (2) Computing the basic charge or payment, including taxes, for services rendered on the basis of measure; and

- (3) 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 the commodities, 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 the 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 the 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 the samples.

- (b) The department may adopt rules:
  - (1) To authorize the licensing of service agencies to conduct routine tests of measurement standards and measuring devices;
  - (2) To establish the process for licensing, including license fees and suspension or revocation of licenses;
  - (3) To establish the frequency of testing for various measurement standards and measuring devices;
  - (4) To establish recordkeeping and reporting requirements for licensed service agencies;
  - (5) To establish procedures whereby licensed service agencies may seal or mark measurement standards or measuring devices as "correct" or "rejected" under section 486-108;
  - (6) To establish procedures for evaluating the performance of licensed service agencies in testing measurement standards and measuring devices; and
  - (7) To establish penalties for violations of this chapter or rules adopted under this subsection. [L 1991, c 153, pt of §6; am L 1998, c 192, §3]

" **§486-106 Testing at state-supported institutions.** The department, through the measurement standards branch, 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 writing, to the supervisory board and to the



executive officer of the institution concerned. [L 1991, c 153, pt of §6; am L 1998, c 192, §5]

" **[\$486-107] Type evaluation; requirements; certificate of conformance.** Any weight or measure, or any weighing or measuring instrument or device, shall have a certificate of conformance indicating that it has passed a national type evaluation by a participating laboratory, prior to being introduced for use for commercial or law enforcement purposes in the State. [L 1991, c 153, pt of §6]

" **§486-108 Use; disposition of correct or incorrect apparatus.** The department, through the measurement standards branch, shall seal or mark with appropriate devices, such measures and measurement standards as it finds, upon inspection and test, to be "correct" as defined in this chapter. The department, through the measurement standards branch, shall reject and mark or tag as "rejected" such measures and measurement standards as it finds, upon inspection and test, to be in noncompliance 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 adopted under section 486-7. Measures and measurement standards that have been rejected may be confiscated and may be destroyed by the department, through the measurement standards branch, if not corrected as required by section 486-109, or if used or disposed of contrary to the requirements of section 486-109. In carrying out this section, the department, through the measurement standards branch, 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. [L 1991, c 153, pt of §6; am L 1998, c 192, §5]

" **§486-109 Duties of owners or custodians of measuring apparatus.** Measures and measurement standards shall be subject to the control of the department, through the measurement standards branch, until such time as they receive a certificate of conformance. Measures or measurement standards that have been initially type evaluated and approved, and subsequently found to be incorrect as defined in this chapter shall remain subject to the control of the department, through the measurement standards branch, until such time as suitable repairs shall have been made, and the measure or measurement

standard is found to be correct as defined in this chapter, or such devices may be destroyed. The owners of the unapproved or rejected measures or measurement standards shall cause the same to be type evaluated and approved or made correct within thirty days or such longer period as may be authorized by the department, through the measurement standards branch; or, in lieu of this, may dispose of the same, but only in such manner as is specifically authorized by the department, through the measurement standards branch. Measures and measurement standards subject to this chapter that have not been type evaluated and approved or that have been rejected shall not be used until they have been officially type evaluated and approved or reexamined and found to be correct or until specific written permission for such use is issued by the department, through the measurement standards branch, or until the rejection tag has been removed by the department, through the measurement standards branch, and the rejected device or apparatus repaired or corrected and placed in service by a person duly registered to perform the acts under rules adopted by the board pursuant to section 486-7. [L 1991, c 153, pt of §6; am L 1998, c 192, §5]

" **[§486-110] Method of sale of commodities; general.** Except as otherwise provided in this chapter, or by firmly established trade custom and practice, or exempted by a rule of the board:

- (1) Commodities in liquid form shall be sold by liquid measure or weight; and
- (2) Commodities not in liquid form shall be sold by weight, mass, volume, length, area, or by count;

provided that liquid commodities shall be sold by weight and commodities not in liquid form shall be sold by measures other than weight, when such methods give accurate information as to the quantity of commodity sold. All methods of sale shall provide accurate and adequate quantity information that permits the buyer to make price and quantity comparisons. 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. [L 1991, c 153, pt of §6]

" **§486-111 Packages; information required; variations; exemptions.** Except as otherwise provided in this chapter, any package 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. [L 1991, c 153, pt of §6; am L 1993, c 54, §6]

" **§486-112 Declarations of unit price on random packages.**

In addition to the declarations required by section 486-111, any package 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. [L 1991, c 153, pt of §6; am L 1993, c 54, §7]

" **§486-113 Deceptive package.** No commodity 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. [L 1991, c 153, pt of §6; am L 1993, c 54, §8]

" **§486-114 Advertising packages for sale.** Whenever a package 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. [L 1991, c 153, pt of §6; am L 1993, c 54, §9]

" **[§486-115] Sale by net measure.** Commodities or services shall be offered for sale on a net weight or net measure basis. [L 1991, c 153, pt of §6]

" **§486-116 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 consumer commodities, 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 the commodities. The price displayed and the price actually charged the purchaser shall be identical unless a prior agreement has been reached between the buyer and the seller or the price charged is lower than the price displayed. 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. [L 1991, c 153, pt of §6; am L 1993, c 54, §10; am L 1998, c 192, §4]

" **§486-117 Inspection of packages.** (a) The department, through the measurement standards branch, 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 measurement standards branch, may order them off sale and may mark or tag them to show them to be illegal. The department, through the measurement standards branch, 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 unless the package is in full compliance with all legal requirements;
- (2) Sell, or keep, offer, or expose for sale any package that has been ordered off sale or marked or tagged as provided in this section, and which package 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 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.

(c) Nothing in this section shall prohibit the administrator from authorizing the disposal of any package, when in the administrator's discretion the best interest of the public will be served by such disposal.

(d) The department, through the measurement standards branch, may seize and dispose of any package 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. [L 1991, c 153, pt of §6; am L 1993, c 54, §11; am L 1998, c 192, §5]

" **[\$486-118] Misbranding.** (a) No person shall deliver for introduction, hold for introduction or introduce into the State; 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 in the manufacture, processing, production, assembly, fabrication, or importation of 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; and
- (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 it deems necessary for the correct and informative labeling of consumer commodities. [L 1991, c 153, pt of §6]

### **Cross References**

Trademarks, unlawful use, see chapter 482.

" **§486-118.5 Ni`ihau shells; representing content.** (a) For the purposes of this section, "Ni`ihau shells" means seashells harvested from the island of Ni`ihau, its waters, or its beaches.

(b) Except as provided herein, no person shall offer, display, expose for sale, or solicit for sale any product or jewelry item fabricated, processed, or manufactured with seashells, that is described, labeled, or identified using the term "Ni`ihau" or "Niihau", either alone or in conjunction with other words, or in a trade or brand name, unless:

- (1) One hundred per cent of all shells in the product or jewelry item are Ni`ihau shells; and
- (2) The product or jewelry item is fabricated, processed, or manufactured entirely within this State.

(c) Any product or jewelry item that consists of at least eighty per cent Ni`ihau shells, by count, and that meets the requirement of subsection (b)(2), may be described, labeled, or identified using the term "contains", followed immediately by the nearest whole number representing the percentage of Ni`ihau shells, by count, contained in the product or jewelry item, followed by the term, "% Ni`ihau shells" or "% Niihau shells". [L 2004, c 91, §1]

" **§486-119 Hawaii-made products; Hawaii-processed products.**

(a) No person shall keep, offer, display or expose for sale, or solicit for the sale of any item, product, souvenir, or any

other merchandise that is labeled "made in Hawaii" or that by any other means misrepresents the origin of the item as being from any place within the State, or uses the phrase "made in Hawaii" as an advertising or media tool for any craft item that has not been manufactured, assembled, fabricated, or produced within the State and that has not had at least fifty-one per cent of its wholesale value added by manufacture, assembly, fabrication, or production within the State.

(b) Subsection (a) notwithstanding, no person shall keep, offer, display, expose for sale, or solicit the sale of any perishable consumer commodity that is labeled "made in Hawaii", "produced in Hawaii", or "processed in Hawaii" or that by any other means represents the origin of the perishable consumer commodity as being from any place within the State, or use the phrase "made in Hawaii", "produced in Hawaii", or "processed in Hawaii" as an advertising or media tool for any perishable consumer commodity, unless the perishable consumer commodity is wholly or partially manufactured, processed, or produced within the State from raw materials that originate from inside or outside the State and at least fifty-one per cent of the wholesale value of the perishable consumer commodity is added by manufacture, processing, or production within the State. [L 1991, c 153, pt of §6; am L 2009, c 80, §2]

" **[§486-119.5] Acacia koa wood; representing content.** In addition to all other label and branding requirements, no person shall offer, display, expose for sale, or solicit for the sale of any timber, lumber, wood, or wood product described or labeled using the term "koa", either alone or in conjunction with other words unless the item is Acacia koa. Nothing in this section shall prevent the use of the term "koa" to describe wood products which are in part made of Acacia koa and, in part, other materials provided that the extent to which Acacia koa is utilized in the wood product is not misrepresented. [L 2002, c 18, §2]

" **[§486-120] "Island fresh" milk.** (a) No person shall keep, offer, display, expose for sale, or solicit for the sale of any processed milk or milk product which is labeled with the term "island fresh", or like terms, or which by any other means misrepresents the origin of the item as being from any place within the State unless the processed milk or milk product has been at least ninety per cent, by weight, produced in the State.

(b) It shall be unlawful for any person to sell or offer to sell to a consumer, or expose for sale to a consumer, any processed milk or milk product for human consumption which has been at least ninety per cent produced within the State, without

providing notice to the consumer that the processed milk or milk product has been locally produced. The notice shall be made by displaying on a conspicuous area on the principal display panels of the carton or container a label or sign printed in bold face or other distinctive type stating that the product is "island fresh" or using another similar term.

(c) For the purpose of this section:

"Carton" or "container" means a package containing processed milk or milk products.

"Consumer" means any person who purchases processed milk or milk products.

"Processed milk or milk product" means processed fresh milk and fresh milk products. [L 1991, c 153, pt of §6]

" **§486-120.5 Macadamia nuts; labeling requirements.** (a) If a label on a consumer package contains language that all of the raw or processed macadamia nuts contained in the package were grown in Hawaii, the label shall be worded, "100% Hawaii-Grown Macadamia Nuts", "Hawaii-Grown Macadamia Nuts", "100% Hawaiian Macadamia Nuts", or "Hawaiian Macadamia Nuts", and shall appear on the principal display panel of the package.

(b) If a label on a consumer package contains language that a portion of the raw or processed macadamia nuts contained in the package was grown in Hawaii, the label shall be worded "Hawaii-Grown Macadamia Nuts", preceded by the per cent by weight of the macadamia nuts contained in the package that were grown in Hawaii, and shall appear on the principal display panel of the package. The per cent by weight of the macadamia nuts in the package shall be the percentage calculated by dividing the weight in pounds of the macadamia nuts grown in Hawaii that are in the package by the weight in pounds of all macadamia nuts in the package and multiplying the quotient by one hundred.

(c) All nonconsumer packages containing macadamia nuts grown in the State and introduced into intrastate or interstate commerce shall bear on the package a label containing language that the package contains Hawaii-grown macadamia nuts. This label shall be in addition to all other labeling requirements specified in this chapter.

(d) Any person keeping, offering, displaying, exposing for sale, or soliciting for sale, any raw or processed macadamia nut product, which represents or which is branded or labeled that all or a percentage or portion of the macadamia nuts were grown in Hawaii, shall make available to the administrator, upon demand, documented proof that the amount of macadamia nuts represented to be grown in the State, was grown in the State.

(e) It shall be a violation of this part:



- (1) To use a label containing the words, "100% Hawaii-Grown Macadamia Nuts", "Hawaii-Grown Macadamia Nuts", "100% Hawaiian Macadamia Nuts", or "Hawaiian Macadamia Nuts", or similar wording, or to otherwise represent that all of the macadamia nuts in the package were grown in Hawaii, if any portion of the macadamia nuts contained in the package was not grown in the State;
- (2) To use a label, as provided for under subsection (b), containing the words "Hawaii-Grown Macadamia Nuts" preceded by a percentage, if less than the specified percentage or none of the macadamia nuts in the package was grown in the State; or
- (3) To use a label representing that any of the macadamia nuts contained in the package was grown in the State, if none of the macadamia nuts contained in the package was grown in the State.

(f) Any person who violates this section shall be subject to penalties under section 486-32. [L 1991, c 110, §1; am L 1999, c 82, §1; am L 2007, c 164, §1]

" **§486-120.6 Hawaii-grown roasted or instant coffee; labeling requirements.** (a) In addition to all other labeling requirements, the identity statement used for labeling or advertising roasted or instant coffee produced in whole or in part from Hawaii-grown green coffee beans shall meet the following requirements:

- (1) For roasted or instant coffee that contains one hundred per cent Hawaii-grown coffee by weight the identity statement shall consist of either:
  - (A) The geographic origin of the Hawaii-grown coffee, in coffee consisting of beans from only one geographic origin, followed by the word "Coffee"; provided that the geographic origin may be immediately preceded by the term "100%"; or
  - (B) The per cent coffee by weight of one of the Hawaii-grown coffees, used in coffee consisting of beans from several geographic origins, followed by the geographic origin of the weight-specified coffee and the terms "Coffee" and "All Hawaiian";
- (2) For roasted or instant coffee consisting of a blend of one or more Hawaii-grown coffees and coffee not grown in Hawaii, the per cent coffee by weight of one of the Hawaii-grown coffees used in the blend, followed by the geographic origin of the weight-specified coffee and the term "Coffee Blend"; and

(3) Each word or character in the identity statement shall be of the same type size and shall be contiguous. The smallest letter or character of the identity statement on packages of sixteen ounces or less net weight shall be at least one and one-half times the type size required under federal law for the statement of net weight or three-sixteenths of an inch in height, whichever is smaller. The smallest letter or character of the identity statement on packages of greater than sixteen ounces net weight shall be at least one and one-half times the type size required under federal law for the statement of net weight. The identity statement shall be conspicuously displayed without any intervening material in a position above the statement of net weight. Upper and lower case letters may be used interchangeably in the identity statement.

(b) A listing of the geographic origins of the various Hawaii-grown coffees and the regional origins of the various coffees not grown in Hawaii that are included in a blend may be shown on the label. If used, this list shall consist of the term "Contains:", followed by, in descending order of per cent by weight and separated by commas, the respective geographic origin or regional origin of the various coffees in the blend that the manufacturer chooses to list. Each geographic origin or regional origin may be preceded by the per cent of coffee by weight represented by that geographic origin or regional origin, expressed as a number followed by the per cent sign. The type size used for this list shall not exceed half that of the identity statement. This list shall appear below the identity statement, if included on the front panel of the label.

(c) It shall be a violation of this section to:

- (1) Use the identity statement specified in subsection (a) (1) (A) or similar terms in labeling or advertising unless the package of roasted or instant coffee contains one hundred per cent coffee from that one geographic origin;
- (2) Use a geographic origin in labeling or advertising, including in conjunction with a coffee style or in any other manner, if the roasted or instant coffee contains less than ten per cent coffee by weight from that geographic origin;
- (3) Use a geographic origin in advertising roasted or instant coffee, including advertising in conjunction with a coffee style or in any other manner, without disclosing the percentage of coffee used from that

geographic origin as described in subsection (a) (1) (B) and (a) (2);

- (4) Use a geographic origin in labeling or advertising roasted or instant coffee, including in conjunction with a coffee style or in any other manner, if the green coffee beans used in that roasted or instant coffee do not meet the grade standard requirements of rules adopted under chapter 147;
- (5) Misrepresent, on a label or in advertising of a roasted or instant coffee, the per cent coffee by weight of any coffee from a geographic origin or regional origin;
- (6) Use the term "All Hawaiian" on a label or in advertising of a roasted or instant coffee if the roasted or instant coffee is not produced entirely from green coffee beans produced in geographic origins defined in this chapter;
- (7) Use a geographic origin on the front label panel of a package of roasted or instant coffee other than in the trademark or in the identity statement as authorized in subsection (a) (1) and (2) unless one hundred per cent of the roasted or instant coffee contained in the package is from that geographic origin;
- (8) Use more than one trademark on a package of roasted or instant coffee unless one hundred per cent of the roasted or instant coffee contained in the package is from that geographic origin specified by the trademark;
- (9) Use a trademark that begins with the name of a geographic origin on a package of roasted or instant coffee unless one hundred per cent of the roasted or instant coffee contained in the package comes from that geographic origin or the trademark ends with words that indicate a business entity; or
- (10) Print the identity statement required by subsection (a) in a smaller font than that used for a trademark that includes the name of a geographic origin pursuant to paragraph (7) and in a location other than the front label panel of a package of roasted or instant coffee.

(d) Roasters, manufacturers, or other persons who package roasted or instant coffee covered by this section shall maintain, for a period of two years, records on the volume and geographic origin or regional origin of coffees purchased and sold and any other records required by the department for the purpose of enforcing this section. Authorized employees of the

department shall have access to these records during normal business hours.

(e) For the purpose of this section:

"Geographic origin" means the geographic regions in which Hawaii-grown green coffee beans are produced, as defined in rules adopted under chapter 147; provided that the term "Hawaiian" may be substituted for the geographic origin "Hawaii".

"Per cent coffee by weight" means the percentage calculated by dividing the weight in pounds of roasted green coffee beans of one geographic or regional origin used in a production run of roasted or instant coffee, by the total weight in pounds of the roasted green coffee beans used in that production run of roasted or instant coffee, and multiplying the quotient by one hundred. [L 1991, c 289, §2; am L 1995, c 103, §1; am L 2002, c 258, §1; am L 2011, c 49, §2]

### **Cross References**

False labeling of Hawaii-grown coffee, see §708-871.5.

- " **§486-121 Misrepresentation of quantity.** No person shall:
- (1) Sell, offer, or expose for sale less than the quantity represented;
  - (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. [L 1991, c 153, pt of §6; am L 1993, c 54, §12]

- " **§486-122 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 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;
  - (5) The identity in the most descriptive terms commercially practicable, including any quality representation made in connection with the sale; and

(6) The count of individually wrapped packages, if more than one. [L 1991, c 153, pt of §6; am L 1993, c 54, §13]

" **[\$486-123] 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. [L 1991, c 153, pt of §6]

## " [PART VI.] MEASUREMASTERS

**[\$486-131] Definitions.** For the purposes of this part:

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

"Public measuremaster" means any person who performs public weighing.

"Public weighing" means the weighing, measuring, or counting, upon request, of vehicles, property, produce, commodities, or articles other than those that the weigher or the weigher's employer, if any, is either buying or selling.

"Vehicle" means any device in, upon, or by which any property, produce, commodity, or article is or may be transported or drawn. [L 1991, c 153, pt of §7]

" **[\$486-132] Enforcement; rules.** The board is authorized to enforce the provisions of this part and shall adopt reasonable rules for the implementation and enforcement of this part. These rules shall have the force and effect of law. The board may adopt rules that include, but are not limited to, the licensing of measuremasters; determining the qualifications of the applicant for a license as a public measuremaster; annual license fees; the granting, renewal, or refusal of a license; period of license validity; measurement practices that must be followed, including the measurement or recording of tare; the required information to be submitted with or as part of a certificate; and the period of record keeping. [L 1991, c 153, pt of §7]

" **[\$486-133] Requirement for measuremaster license; duties; prohibitions.** Any person who engages in public weighing shall be licensed as a public measuremaster and shall perform the duties as specified by rule of the board. Any person who is not licensed as a public measuremaster is prohibited from assuming the title of public measuremaster and is prohibited from performing the acts or duties of a public measuremaster. [L 1991, c 153, pt of §7]

" **§486-134 Optional licensing.** The following persons shall not be required, but shall be permitted, to obtain licenses as public measuremasters:

- (1) A law enforcement or measurement standards officer, or other qualified employee of a state or county agency or institution when acting within the scope of the officer's or employee's official duties;
- (2) A person weighing property, produce, commodities, or articles that the person, or the person's employer, is either buying or selling; and
- (3) A person weighing property, produce, commodities, or articles in conformity with the requirements of federal statutes or the statutes of this State relative to warehouse workers or processors. [L 1991, c 153, pt of §7; am L 2008, c 19, §55]

" **[§486-135] Reciprocal acceptance of certificates.**

Whenever in any other state that licenses public weighmasters or measuremasters there is statutory authority for the recognition and acceptance of the certificates issued by measuremasters of this State, the board is authorized to recognize and accept the certificates of that state. [L 1991, c 153, pt of §7]

" **[§486-136] Offenses and penalties.** (a) Criminal. Any person who performs any one of the acts enumerated in this subsection shall be guilty of a misdemeanor:

- (1) Use or have in possession a device which has been altered to facilitate fraud;
- (2) Falsely certify any gross, tare, or net weight or measure required by this part to be on the certificate;
- (3) Falsify a certificate;
- (4) Issue a certificate simulating the certificate in this part;
- (5) Refuse without cause to weigh or measure any article or thing which it is the person's duty to weigh or measure, or refuse to state in any certificate anything required to be therein;
- (6) Assume the title of public measuremaster, or any title of similar import, without a valid license;
- (7) Perform the duties or acts to be performed by a public measuremaster without a valid license;
- (8) Present oneself as a public measuremaster without a valid license;

- (9) Issue any certificate, ticket, memorandum, or statement for which a fee is charged without a valid license;
  - (10) Engage in the full-time or part-time business of measuring for hire without a valid license;
  - (11) Delegate the person's own authority as a public measuremaster to any person not licensed as a public measuremaster;
  - (12) Request a public measuremaster to weigh, measure, or count any vehicle, property, produce, commodity, or article falsely or incorrectly; or
  - (13) Request a false or incorrect certificate.
- (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 any device for certification purposes that does not meet the requirements of the National Institute of Standards and Technology handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices";
  - (2) Operate devices in a manner not in accordance with the National Institute of Standards and Technology handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices" requirements; or
  - (3) Violate any provision of this part or any rule adopted under this part for which a specific penalty has not been prescribed. [L 1991, c 153, pt of §7]

" **[\$486-137] Suspension and revocation of license.** The board is authorized to suspend or revoke the license of any public measuremaster:

- (1) When it is satisfied, after a hearing pursuant to chapter 91, that the licensee has violated any provision of this part or of any valid rule of the board affecting public measuremasters; or
- (2) In accordance with section 831-3.1. [L 1991, c 153, pt of §7]