

**ACT 126**

A Bill for an Act to Establish a Uniform System of Weights and Measures, by Amending Chapter 162, Revised Laws of Hawaii 1955, as Amended.

*Be it Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 162, Revised Laws of Hawaii 1955, is hereby amended to read as follows:

**Section 162-1. Meaning of Terms. When used in this chapter:**

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

(2) The word 'weight(s) and (or) measure(s)' shall be construed to mean all weights and measures of every kind, instrument and devices for weighing and measuring, and any appliances and accessories associated with any or all such instruments and devices, except that the term shall not be construed to include meters for the measurement of electricity, gas (natural or manufactured), or water when the same are operated in a public utility system. Such electricity, gas, and water meters are hereby specifically excluded from the purview of this chapter and none of the provisions of this chapter shall be construed to apply to such meters or to any appliances or accessories associated therewith.

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

(4) The terms 'director' and 'deputy director' shall be construed to mean, respectively, the State Director of Weights and Measures and the Deputy State Director of Weights and Measures.

(5) The term 'inspector' shall be construed to mean a State Inspector of Weights and Measures.

(6) The term 'intrastate commerce' shall be construed to mean any and all commerce or trade that is begun, carried on, and completed wholly within the limits of the State of Hawaii.

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

**Section 162-2. Systems of weights and measures.** The system of weights and measures in customary use in the United States and the metric system of weights and measures are jointly recognized, and one or the other of these systems shall be used for all commercial purposes in the State of Hawaii. The definitions of basic units of weight and measure, the tables of weight and measure, and weights and measures equivalents, as published by the National Bureau of Standards, are recognized and shall govern weighing and measuring equipment and transactions in the State.

**Section 162-3. Definitions of special units of measure.** The term 'barrel,' when used in connection with fermented liquor, shall mean a unit of 31 gallons. The term 'ton' shall mean a unit of 2,000 pounds avoirdupois weight. The term 'cord,' when used in connection with wood intended for fuel purposes, shall mean the amount of wood that is contained in a space of 128 cubic feet when the wood is ranked and well stowed.

**Section 162-4. State standards of weight and measure.** Such weights and measures in conformity with the standards of the United States as have been supplied to the State by the Federal Government or otherwise obtained by the State for use as State standards shall, when the same shall have been certified as being satisfactory for use as such by the National Bureau of Standards, be the State Standards of Weight and Measure. The State standards shall be kept in a safe and suitable place in the office or laboratory of the State Division of Weights and Measures, they shall not be removed from the said office or laboratory except for repairs or for certification, and they shall be submitted at least once in ten years to the National Bureau of Standards for certification. The State standards shall be used only in verifying the office standards and for scientific purposes.

**Section 162-5. Office and field standards and equipment.** In addition to the State standards provided for in Section 162-4 of this chapter, there shall be supplied by the State at least one complete set of copies of these to be kept in the office or laboratory of the State Division of Weights and Measures and to be known as 'Office Standards,' and also such 'field standards' and such equipment as may be found necessary to carry out the provisions of this chapter. The office standards and field standards shall be verified upon their initial receipt and at least once each year thereafter, the office standards by direct comparison with the State standards and the field standards by comparison with the office standards.

**Section 162-6. State director, deputy director, and inspectors of weights and measures.** There is hereby established within the department of agriculture a division of weights and measures. The chairman of the board of agriculture shall be, ex officio, the State director of weights and measures. He shall appoint a deputy director who shall administer said division, and such necessary technical and clerical personnel as shall be necessary to carry out the provisions of this chapter.

**Section 162-7. Bonds.** The deputy director and each inspector shall furnish surety bonds in the amount of \$5,000 and \$1,000 respectively, conditioned upon the faithful performance of their duties and the safekeeping of any standards or equipment entrusted to their care. The payments for such bonds shall be made by the State Government and the bond shall be in such form as the Attorney General shall approve.

**Section 162-8. General powers and duties of director.** The director shall have the custody of the State standards of weight and measure and of the other standards and equipment provided for by this chapter, and shall keep accurate records of the same. The director shall enforce the provisions of this chapter. He shall have and keep a general supervision over the weights and measures offered for sale, sold, or in use in the State. He shall annually, in the month of July, make to the Governor a report on all of the activities of his office.

**Section 162-9. Specific powers and duties of director; regulations.** The director shall issue from time to time reasonable regulations for the enforcement of this chapter, which regulations shall have the force and effect of law. These regulations may include (1) rules governing the technical and reporting procedures to be followed, and the report and record forms and marks of approval and rejection to be used, by inspectors of weights and measures in the discharge of their official duties, (2) schedules of fees for testing and certification, (3) exemptions from the sealing or marking requirements of Section 162-14 of this chapter with respect to weights and measures of such character or size that such sealing or marking would be inappropriate, impracticable, or damaging to the apparatus in question, and (4) with respect to classes of weights and measures found to be of such character that annual retesting is unnecessary to continued accuracy, exemptions from the requirement of Sections 162-10 and 162-11 of this chapter for annual testing, and schedules fixing the frequency of required retests for classes of devices so exempted. These regulations shall include specifications, tolerances, and regulations for weights and measures of the character of those specified in Section 162-11 of this chapter, designed to eliminate from use, without prejudice to apparatus that conforms as closely as practicable to the official standards, those (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. The specifications, tolerances, and regulations for commercial weighing and measuring devices, together with amendments thereto, as recommended by the National Bureau of Standards and published in National Bureau of Standards Handbook 44, second edition, as published at the time of the enactment of this Act shall be the specifications, tolerances and regulations for commercial weighing and/or measuring devices of the State of Hawaii. The director may at his discretion adopt, by regulation, any supplement to the National Bureau of Standards Handbook 44, second edition, or any subsequent similar publication by such bureau. For the purposes of this chapter, apparatus shall be deemed to be 'correct' when it conforms to all applicable requirements promulgated as specified in this section; other apparatus shall be deemed to be 'incorrect.'

**Section 162-10. Same: testing at state-supported institutions.** The director shall from time to time test all weights and measures used in checking the receipt or disbursement of supplies in every institution for the maintenance of which moneys are appropriated by the legislature, reporting his findings, in writing, to the supervisory Board and to the executive officer of the institution concerned.

**Section 162-11. Same: general testing.** When not otherwise provided by law, the director shall have the power to inspect and test, to ascertain if they are correct, all weights and measures kept, offered, or exposed for sale. It shall be the duty of the director, at least annually to inspect and test, to ascertain if they are correct, all weights and measures commercially used (1) in determining the weight, measurement, or count of commodities or things sold, or offered or exposed for sale, on the basis of weight or of measure, (2) in computing the basic charge or payment for services rendered on the basis of weight or of measure, or (3) in determining weight or measurement when a charge is made for such determination; provided, that with respect to single-service devices—that is, devices designed to be used commercially only once and to be then discarded—and 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 of each individual device shall not be required and the inspecting and testing requirements of this section will be satisfied when inspections and tests are made on representative samples of such devices; and the lots of which such samples are representative shall be held to be correct or incorrect upon the basis of the results of the inspections and tests on such samples.

**Section 162-12. Same: investigations.** The director shall investigate complaints made to him concerning violations of the provisions of this chapter, and shall, upon his own initiative, conduct such investigations as he deems appropriate and advisable to develop information on prevailing procedures in commercial quantity determination and on possible violations of the provisions of this chapter and to promote the general objective of accuracy in the determination and representation of quantity in commercial transactions.

**Section 162-13. Same: inspection of packages.** The director shall, from time to time, weigh or measure and inspect packages or amounts of commodities kept, offered, or exposed for sale, sold, or in the process of delivery to determine whether the same contain the amounts represented and whether they be kept, offered, or exposed for sale, or sold, in accordance with law; and when such packages or amounts of commodities are found not to contain the amounts represented, or are found to be kept, offered, or exposed for sale in violation of law, the director may order them off sale and may so mark or tag them as to show them to be illegal. In carrying out the provisions of this section, the director 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 and representative of such lot. No person shall (1) sell, or keep, offer, or expose for sale in intrastate commerce any package or amount of commodity that has been ordered off sale or marked or tagged as provided in this section unless and until such package or amount of commodity has been brought into full compliance with all legal requirements, or (2) dispose of any package or amount of commodity that has been ordered off sale or marked or tagged as provided in this section and that has not been brought into compliance with legal requirements, in any manner except with the specific approval of the director.

**Section 162-14. Same: stop-use, stop-removal, and removal orders.** The director shall have the power to issue stop-use orders, stop-removal orders, and removal orders with respect to weights and measures being, or susceptible of being, commercially used, and to issue stop-removal orders and removal orders with respect to packages or amounts of commodities kept, offered, or exposed for sale, sold, or in process of delivery, whenever in the course of his enforcement of the provisions of this chapter he deems it necessary or expedient to issue such orders, and no person shall use, remove from the premises specified, or fail to remove from the premises specified any weight, measure, or package or amount of commodity contrary to the terms of a stop-use order, stop-removal order, or removal order issued under the authority of this section.

**Section 162-15. Same: disposition of correct and incorrect apparatus.** The director shall approve for use and seal or mark with appropriate devices such weights and measures as he finds upon inspection and test to be 'correct' as defined in Section 162-9 of this chapter, and shall reject and mark or tag as 'rejected' such weights and measures as he finds, upon inspection or test to be 'incorrect' as defined in Section 162-9 of this chapter. Weights and measures that have been rejected may be confiscated and may be destroyed by the director if not corrected as required by Section 162-18 of this chapter, or if used or disposed of contrary to the requirements of Section 162-18 of this chapter.

**Section 162-16. Same: right of entry and inspection.** In performance of his official duties, the director is authorized to enter and

go into or upon at any reasonable time, without formal warrant, any structure or premises, or any other place where commercial transactions may be conducted.

**Section 162-17. Powers and duties of deputy director and inspectors.** The director may delegate any of his powers and duties to the deputy director and the inspectors, which he shall deem necessary and proper to carry out the provisions of this chapter.

**Section 162-18. Duties of owners of incorrect apparatus.** Weights and measures that have been rejected under the authority of the director shall remain subject to the control of the rejecting authority until such time as suitable repair or disposition thereof has been made as required by this section. The owners of such rejected weights and measures shall cause the same to be made correct within thirty days or such longer period as may be authorized by the rejecting authority; or, in lieu of this, may dispose of the same, but only in such manner as is specifically authorized by the rejecting authority. Weights and measures that have been rejected shall not again be used commercially until they have been officially re-examined and found to be correct or until specific written permission for such use is issued by the rejecting authority.

**Section 162-19. Hindering or obstructing officer: penalties.** Any person who shall hinder or obstruct in any way the director, the deputy director, or any one of the inspectors in the performance of his official duties, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than \$20.00 or more than \$200.00, or by imprisonment for not more than three months, or by both such fine and imprisonment.

**Section 162-20. Impersonation of officer: penalties.** Any person who shall impersonate in any way the director, the deputy director, or any one of the inspectors, by the use of his seal or a counterfeit of his seal, or in any other manner, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than \$100.00 or more than \$500.00, or by imprisonment for not more than one year, or by both such fine and imprisonment.

**Section 162-21. Offenses and penalties.** Any person who, by himself or by his servant or agent, or as the servant or agent of another person, performs any one of the acts enumerated in subparagraphs (1) through (9) of this section shall be guilty of a misdemeanor and, upon a first conviction thereof, shall be punished by a fine of not less than \$20.00 or more than \$200.00, or by imprisonment for not more than three months, or by both such fine and imprisonment; and upon a second or subsequent conviction thereof, he shall be punished by a fine of not less than \$50.00 or more than \$500.00, or by imprisonment for not more than one year, or by both such fine and imprisonment.

(1) Use or have in possession for the purpose of using for any commercial purpose specified in Section 162-11, sell, offer, or expose for sale or hire, or have in possession for the purpose of selling or

hiring, an incorrect weight or measure or any device or instrument used to or calculated to falsify any weight or measure.

(2) Use, or have in possession for current use, in the buying or selling of any commodity or thing, or for hire or award, or in the computation of any basic charge or payment for services rendered on the basis of weight or measurement, or in the determination of weight or measurement when a charge is made for such determination, any weight or measure that has not been tested and sealed by the appropriate authority within one year, (a) unless written notice has been given to the appropriate authority to the effect that such weight or measure is available for examination, or is due for re-examination, as the case may be, (b) unless specific written permission to use such weight or measure has been received from the appropriate authority, or (c) unless such weight or measure has been exempted from sealing or annual testing requirements by the provisions of Section 162-11 of this chapter or by a regulation of the director issued under the authority of Section 162-9 of this chapter.

(3) Dispose of any rejected or condemned weight or measure in a manner contrary to law or regulation.

(4) Remove from any weight or measure, contrary to law or regulation, any tag, seal, or mark placed thereon by the appropriate authority.

(5) Sell, or offer or expose for sale, less than the quantity he represents of any commodity, thing, or service.

(6) Take more than the quantity he represents of any commodity, thing, or service when, as buyer, he furnishes the weight, or measure by means of which the amount of the commodity, thing, or service is determined.

(7) 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 regulation.

(8) Use in retail trade, except in the preparation of packages put up in advance of sale and of medical prescriptions, a weight or measure that is not so positioned that its indications may be accurately read and the weighing or measuring operation observed from some position which may reasonably be assumed by a customer.

(9) Violate any provision of this chapter or of the regulations promulgated under the provisions of this chapter for which a specific penalty has not been prescribed.

**Section 162-22. Injunction.** In addition to any other remedy by law provided, the director is authorized to apply to any court of competent jurisdiction for, and such court upon hearing and for cause shown may grant, a temporary or permanent injunction restraining any person from violating any provision of this chapter.

**Section 162-23. Applicability to department of health functions.** Nothing herein shall be construed to limit or otherwise alter the functions, duties and powers of the department of health relative to the administration of the Hawaii Food, Drug and Cosmetics Act, or the regulation of health matters essential to the public health, welfare, and safety. In all cases where the division of weights and measures

determines that a food, drug, or cosmetic has been mislabeled hereunder, the division shall send a copy of its report to the department of health, and shall in all other respect coordinate its activities hereunder with said department of health as to health matters."

**SECTION 2.** Repeal of conflicting laws. All laws and parts of laws contrary to or inconsistent with the provisions of this Act are hereby repealed.

**SECTION 3.** Appropriation. There is hereby appropriated from the general funds of the State not otherwise appropriated the sum of \$60,000 for the purposes of this Act.

**SECTION 4.** Transfer of records, equipment, and personnel. Within 60 days of the effective date of this Act, all weights and measures standards, records, and equipment necessary for the use, transportation, testing, and inspection of weights and measures standards, heretofore owned and used by any county in the administration of weights and measures law, shall be transferred by such county to the department of agriculture of the State of Hawaii without cost to the State or reimbursement to such county, and without compliance with any disposal procedures or requirements, any law to the contrary notwithstanding.

Within 90 days of the effective date of this Act, any employee of a county, whose primary duty prior to the effective date of this Act was concerned with the administration of the weights and measures law, may transfer to a comparable civil service position with the said department of agriculture, without the necessity of an examination; and upon such transfer no such employee shall suffer any loss of salary, seniority, prior service credit, vacation, sick leave or other employee benefit or privilege as a consequence of this Act.

**SECTION 5.** Effective date. This Act shall take effect January 1, 1966.

(Approved June 16, 1965.) **H.B. 73.**