

**ACT 192**

S.B. NO. 2770

A Bill for an Act Relating to Measurement Standards.

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

SECTION 1. Section 486-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Retail” means sale to the final consumer.”

SECTION 2. Section 486-36, Hawaii Revised Statutes, is amended to read as follows:

“[[§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:
  - [cease]
  - (A) Cease and desist from the violation[, pay];
  - (B) Pay an administrative penalty not to exceed \$2,000 for each day of violation[, correct];
  - (C) Correct the violation at the alleged violator’s own expense[.]; or [appear]
  - (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 subsection, 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.”

SECTION 3. Section 486-105, Hawaii Revised Statutes, is amended to read as follows:

“[[§486-105]] General testing. (a) Unless otherwise provided by law, the department, through the [division of] 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 [determining]:

- (1) Determining the measurement of commodities or things sold, or offered or exposed for sale, on the basis of measure; [in computing]
- (2) Computing the basic charge or payment, including taxes, for services rendered on the basis of measure; and [in determining]
- (3) Determining measurement when a charge is made for such determination, including the payment of any associated tax[;].

[provided] Provided that in compliance with a rule of the board, tests may be made on representative samples of [such] the commodities [of], 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 [such] the samples[; and]. 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 [such] 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 [such] 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 record keeping 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."

SECTION 4. Section 486-116, Hawaii Revised Statutes, is amended to read as follows:

**“§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 [packages or] consumer commodities [sold from bulk], 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 [such packages or] 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 promi-

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nently 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.”

SECTION 5. Sections 486-103, 486-106, 486-108, 486-109, 486-117, and 486H-3, Hawaii Revised Statutes, are amended by substituting the term “measurement standards branch” wherever the term “division of measurement standards” appears, as the context requires.

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.

(Approved July 17, 1998.)