
SUBSTITUTE SENATE BILL 5418

State of Washington

54th Legislature

1995 Regular Session

By Senate Committee on Agriculture & Agricultural Trade & Development
(originally sponsored by Senators Fraser, Wood, Wojahn and Prentice)

Read first time 02/24/95.

1 AN ACT Relating to weights and measures enforcement for scanners;
2 amending RCW 19.94.010, 19.94.390, 19.94.510, and 19.94.900; adding new
3 sections to chapter 19.94 RCW; creating a new section; and prescribing
4 penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** The purpose of this act is to assure the
7 existing weights and measures program includes monitoring for accuracy
8 the prices being charged by electronic scanners and other point-of-sale
9 systems used in retail sales. The intent of the legislature in
10 establishing this program is (1) to increase consumer protection and
11 confidence that prices being charged with the use of electronic
12 scanners have a high degree of accuracy, and (2) to establish a
13 standard of fairness among retail merchants consistent with nationally
14 recognized pricing procedures and accuracy requirements.

15 It is the intent of the legislature that a portion of the moneys
16 appropriated from the state general fund for the weights and measures
17 program be utilized to conduct inspections of electronic scanner and
18 other point-of-sale systems.

1 **Sec. 2.** RCW 19.94.010 and 1992 c 237 s 3 are each amended to read
2 as follows:

3 (1) Unless the context clearly requires otherwise, the definitions
4 in this section apply throughout this chapter and to any rules adopted
5 pursuant to this chapter.

6 (a) "City" means a first class city with a population of over fifty
7 thousand persons.

8 (b) "City sealer" means the person duly authorized by a city to
9 enforce and administer the weights and measures program within such
10 city and any duly appointed deputy sealer acting under the instructions
11 and at the direction of the city sealer.

12 (c) "Commodity in package form" means a commodity put up or
13 packaged in any manner in advance of sale in units suitable for either
14 wholesale or retail sale, exclusive, however, of an auxiliary shipping
15 container enclosing packages that individually conform to the
16 requirements of this chapter. An individual item or lot of any
17 commodity not in packaged form, but on which there is marked a selling
18 price based on established price per unit of weight or of measure,
19 shall be construed to be a commodity in package form.

20 (d) "Consumer package" or "package of consumer commodity" means a
21 commodity in package form that is customarily produced or distributed
22 for sale through retail sales agencies or instrumentalities for
23 consumption by persons, or used by persons for the purpose of personal
24 care or in the performance of services ordinarily rendered in or about
25 a household or in connection with personal possessions.

26 (e) "Cord" means the measurement of wood intended for fuel or pulp
27 purposes that is contained in a space of one hundred twenty-eight cubic
28 feet, when the wood is ranked and well stowed.

29 (f) "Department" means the department of agriculture of the state
30 of Washington.

31 (g) "Director" means the director of the department or duly
32 authorized representative acting under the instructions and at the
33 direction of the director.

34 (h) "Fish" means any waterbreathing animal, including shellfish,
35 such as, but not limited to, lobster, clam, crab, or other mollusca
36 that is prepared, processed, sold, or intended for sale.

37 (i) "Net weight" means the weight of a commodity excluding any
38 materials, substances, or items not considered to be part of such
39 commodity. Materials, substances, or items not considered to be part

1 of a commodity shall include, but are not limited to, containers,
2 conveyances, bags, wrappers, packaging materials, labels, individual
3 piece coverings, decorative accompaniments, and coupons.

4 (j) "Nonconsumer package" or "package of nonconsumer commodity"
5 means a commodity in package form other than a consumer package and
6 particularly a package designed solely for industrial or institutional
7 use or for wholesale distribution only.

8 (k) "Meat" means and shall include all animal flesh, carcasses, or
9 parts of animals, and shall also include fish, shellfish, game,
10 poultry, and meat food products of every kind and character, whether
11 fresh, frozen, cooked, cured, or processed.

12 (l) "Official seal of approval" means the uniform seal or
13 certificate issued by the director or city sealer which indicates that
14 a weights and measures standard or a weighing or measuring instrument
15 or device conforms with the specifications, tolerances, and other
16 technical requirements adopted in RCW 19.94.195.

17 (m) "Person" means any individual, receiver, administrator,
18 executor, assignee, trustee in bankruptcy, trust, estate, firm,
19 copartnership, joint venture, club, company, business trust,
20 corporation, association, society, or any group of individuals acting
21 as a unit, whether mutual, cooperative, fraternal, nonprofit, or
22 otherwise.

23 (n) "Point-of-sale system" means a cash register, device, or system
24 capable of recovering stored information related to the price of
25 individual retail items.

26 (o) "Poultry" means all fowl, domestic or wild, that is prepared,
27 processed, sold, or intended or offered for sale.

28 (~~((+o))~~) (p) "Service agent" means a person who for hire, award,
29 commission, or any other payment of any kind, installs, inspects,
30 checks, adjusts, repairs, reconditions, or systematically standardizes
31 the graduations of a weighing or measuring instrument or device.

32 (~~((+p))~~) (q) "Ton" means a unit of two thousand pounds avoirdupois
33 weight.

34 (~~((+q))~~) (r) "Weighing or measuring instrument or device" means any
35 equipment or apparatus used commercially to establish the size,
36 quantity, capacity, count, extent, area, heaviness, or measurement of
37 quantities, things, produce, or articles for distribution or
38 consumption, that are purchased, offered or submitted for sale, hire,
39 or award on the basis of weight, measure or count, including any

1 accessory attached to or used in connection with a weighing or
2 measuring instrument or device when such accessory is so designed or
3 installed that its operation affects, or may effect, the accuracy or
4 indication of the device. This definition shall be strictly limited to
5 those weighing or measuring instruments or devices governed by Handbook
6 44 as adopted under RCW 19.94.195.

7 ~~((r))~~ (s) "Weight" means net weight as defined in this section.

8 ~~((s))~~ (t) "Weights and measures" means the recognized standards
9 or units of measure used to indicate the size, quantity, capacity,
10 count, extent, area, heaviness, or measurement of any consumable
11 commodity.

12 ~~((t))~~ (u) "Weights and measures standard" means any object used
13 by the director, a city sealer, or a service agent that under specified
14 conditions defines or represents a recognized weight or measure during
15 the inspection, adjustment, testing, or systematic standardization of
16 the graduations of any weighing or measuring instrument or device.

17 (2) The director shall prescribe by rule other definitions as may
18 be necessary for the implementation of this chapter.

19 **Sec. 3.** RCW 19.94.390 and 1969 c 67 s 39 are each amended to read
20 as follows:

21 (1) Whenever any commodity or service is sold, or is offered,
22 exposed, or advertised for sale, by weight, measure, or count, the
23 price shall not be misrepresented, nor shall the price be represented
24 in any manner calculated or tending to mislead or deceive an actual or
25 prospective purchaser. Whenever an advertised, poster or labeled price
26 per unit of weight, measure, or count includes a fraction of a cent,
27 all elements of the fraction shall be prominently displayed and the
28 numeral or numerals expressing the fraction shall be immediately
29 adjacent to, of the same general design and style as, and at least one-
30 half the height and one-half the width of the numerals representing the
31 whole cents.

32 (2) The examination procedure recommended for price verification by
33 the price verification working group of the laws and regulations
34 committee of the national conference on weights and measures (as
35 reflected in the fourth draft, dated November 1, 1994) for point-of-
36 sale devices such as electronic scanners shall govern such examinations
37 conducted under this chapter. The procedure shall be deemed to be
38 adopted under this chapter. However, the department may revise the

1 procedure as follows: The department shall provide notice of and
2 conduct a public hearing pursuant to chapter 34.05 RCW to determine
3 whether any revisions to this procedure made by the national institute
4 of standards and technology or its successor organization for
5 incorporating the examination procedure into an official handbook of
6 the institute or its successor, or any subsequent revisions of the
7 handbook regarding such procedures shall also be adopted under this
8 chapter. If the department determines that the procedure should be so
9 revised, it may adopt the revisions. Violations of this section
10 regarding the use of devices such as electronic scanners may be found
11 only as provided by the examination procedures adopted by or under this
12 subsection.

13 (3) Electronic scanner screens installed after January 1, 1996, and
14 used in retail establishments must be visible to the consumer at the
15 checkout line.

16 **Sec. 4.** RCW 19.94.510 and 1992 c 237 s 35 are each amended to read
17 as follows:

18 (1) Any person who, by himself or herself, by his or her agent or
19 employee, or as the agent or employee of another person, performs any
20 one of the acts enumerated in (a) through (k) of this subsection is
21 subject to a civil penalty of no more than one thousand dollars:

22 (a) Use or have in possession for the purpose of using for any
23 commercial purpose a weighing or measuring instrument or device that is
24 intentionally calculated to falsify any weight, measure, or count of
25 any commodity, or to sell, offer, expose for sale or hire or have in
26 possession for the purpose of selling or hiring an incorrect weighing
27 or measuring instrument or device or any weighing or measuring
28 instrument or device calculated to falsify any weight or measure.

29 (b) Knowingly use or have in possession for current use in the
30 buying or selling of any commodity or thing, for hire or award, or in
31 the computation of any basic charge or payment for services rendered on
32 the basis of weight, measurement, or count, or in the determination of
33 weight, measurement or count, when a charge is made for such
34 determination, any incorrect weighing or measuring instrument or
35 device.

36 (c) Dispose of any rejected weighing or measuring instrument or
37 device in a manner contrary to law or rule.

1 (d) Remove from any weighing or measuring instrument or device,
2 contrary to law or rule, any tag, seal, stamp or mark placed thereon by
3 the director or a city sealer.

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

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

10 (g) Keep for the purpose of sale, advertise, offer or expose for
11 sale or sell any commodity, thing or service in a condition or manner
12 contrary to law or rule.

13 (h) Use in retail trade, except in the preparation of packages put
14 up in advance of sale and of medical prescriptions, a weighing or
15 measuring instrument or device that is not so positioned that its
16 indications may be accurately read and the weighing or measuring
17 operation observable from some position which may reasonably be assumed
18 by a customer.

19 (i) Knowingly approve or issue an official seal of approval for any
20 weighing or measuring instrument or device known to be incorrect.

21 (j) Fails to disclose to the department or a city sealer any
22 knowledge of information relating to, or observation of, any device or
23 instrument added to or modifying any weighing or measuring instrument
24 or device for the purpose of selling, offering, or exposing for sale,
25 less than the quantity represented of a commodity or calculated to
26 falsify weight or measure, if the person is a service agent.

27 (k) Violate any other provision of this chapter or of the rules
28 adopted under the provisions of this chapter for which a specific
29 penalty has not been prescribed.

30 (2) Any person who, by himself or herself, by his or her agent or
31 employee, or as the agent or employee of another person, violates RCW
32 19.94.390 as determined by the examination procedure adopted by or
33 under RCW 19.94.390(2) is subject to a civil penalty of not more than
34 one thousand dollars. The results of an inspection conducted pursuant
35 to RCW 19.94.390(2) shall not be disclosed to the public for a period
36 of ten days following the completion of the inspection.

37 (3) Any person who, by himself or herself, by his or her agent or
38 employee, or as the agent or employee of another person, performs any

1 of the following acts is subject to a civil penalty of no more than
2 five thousand dollars:

3 (a) Knowingly adds to or modifies any weighing or measuring
4 instrument or device by the addition of a device or instrument that
5 would allow the sale, or the offering or exposure for sale, of less
6 than the quantity represented of a commodity or falsification of weight
7 or measure.

8 (b) Commits as a fourth or subsequent infraction any of the acts
9 listed in subsection (1) of this section.

10 **Sec. 5.** RCW 19.94.900 and 1969 c 67 s 54 are each amended to read
11 as follows:

12 (1) Except as provided in subsection (2) of this section, the
13 provisions of this chapter shall be cumulative and nonexclusive and
14 shall not affect any other remedy available at law.

15 (2) The penalty specified by RCW 19.94.510(2) is exclusive for
16 violations specified in RCW 19.94.390(2) with regard to any other
17 penalty or recovery except as may be provided under the consumer
18 protection act, chapter 19.86 RCW, or as may be provided under other
19 laws governing private rights of action.

20 NEW SECTION. **Sec. 6.** The department shall provide a complaint
21 filing procedure for consumers regarding price or computation
22 inaccuracy of electronic scanners and other point-of-sale systems. The
23 department shall examine more frequently retail establishments against
24 which complaints are filed. This section shall expire January 1, 2000.

25 NEW SECTION. **Sec. 7.** The department shall develop a written
26 report on the implementation of chapter . . . , Laws of 1995 (this act)
27 that provides information including but not limited to the number of
28 inspections conducted, the results of the inspections, the number of
29 warnings issued, and the number of enforcement actions taken. The
30 report shall be submitted to the secretary of the senate and chief
31 clerk of the house of representatives by December 15 on each even-
32 numbered year. This section shall expire January 1, 2000.

1 NEW SECTION. **Sec. 8.** Sections 6 and 7 of this act are each added
2 to chapter 19.94 RCW.

--- END ---