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ENGROSSED SUBSTITUTE HOUSE BILL 1856

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State of Washington

52nd Legislature

1991 Regular Session

By House Committee on Revenue (originally sponsored by Representatives Wang and Holland; by request of Department of Agriculture and Office of Financial Management).

Read first time March 11, 1991.

1 AN ACT Relating to weights and measures; amending RCW 19.94.150,  
2 19.94.160, 19.94.190, 19.94.200, 19.94.220, 19.94.240, 19.94.250,  
3 19.94.260, 19.94.290, 19.94.300, 19.94.330, 19.94.340, 19.94.350,  
4 19.94.420, 19.94.440, and 19.94.450; and creating new sections.

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

6 NEW SECTION. **Sec. 1.** The legislature finds:

7 (1) Accurate weights and measures are essential for the efficient  
8 operation of commerce in Washington, and weights and measures are  
9 important to both consumers and businesses.

10 (2) Legislation to expand the weights and measures program and fund  
11 the program with license fees on weights and measures devices has been  
12 considered.

13 (3) Additional information is necessary before further action can  
14 be taken.

1        NEW SECTION.    **Sec. 2.**        It is the intent of the legislature to  
2 fund the current weights and measures program only through the first  
3 year of the 1991-93 fiscal biennium, and to base funding of the program  
4 for the second year of the biennium and ensuing biennia upon the  
5 recommendations of the study performed under section 3 of this act.

6        NEW SECTION.    **Sec. 3.**        The department of agriculture shall  
7 conduct a study of a weights and measures program necessary to protect  
8 both consumers and business.    In the conduct of this study the  
9 department shall consult with those affected by the weights and  
10 measures program.    The department may create an advisory committee made  
11 up of consumers and members of the business community affected by the  
12 weights and measures program.

13        (2) The study shall include:

14        (a) Determination of the appropriate level and form for a weights  
15 and measures program sufficient for the efficient operation of commerce  
16 in Washington.

17        (b) Recommendations for an appropriate funding mechanism for the  
18 weights and measures program.

19        (3) In conducting the study the department shall:

20        (a) Identify the benefits of the weights and measures program,  
21 taking into account the element of service provided the device owners  
22 and the element of consumer protection provided the general public.

23        (b) Survey other states about their methods of funding weights and  
24 measures programs, frequency of inspection, and number of inspection  
25 personnel.

26        (c) Investigate the potential for error for different types of  
27 devices and determine the appropriate frequency of inspection for  
28 different types of weights and measures devices.

1 (d) Determine an appropriate license fee schedule for different  
2 types of devices taking into account the cost of equipment and  
3 personnel to the department of agriculture.

4 (e) Determine the appropriate level of license fee revenue sharing  
5 with those first class cities operating a weights and measures program.

6 (f) Examine the need to license and inspect electronic scanning  
7 devices and other new weighing and measuring technology.

8 (g) Examine the level of complaints relating to firewood  
9 deliveries.

10 (h) Study any other issues relevant to the weights and measures  
11 program.

12 **Sec. 4.** RCW 19.94.150 and 1969 c 67 s 15 are each amended to read  
13 as follows:

14 The system of weights and measures in customary use in the United  
15 States and the metric system of weights and measures are jointly  
16 recognized, and either one or both of these systems shall be used for  
17 all commercial purposes in this state. The definitions of basic units  
18 of weight and measure and weights and measures equivalents, as  
19 published by the national (~~bureau of standards~~) institute of  
20 standards and technology, are recognized and shall govern weighing and  
21 measuring equipment and transactions in the state.

22 **Sec. 5.** RCW 19.94.160 and 1969 c 67 s 16 are each amended to read  
23 as follows:

24 Weights and measures in conformity with the standards of the United  
25 States as have been supplied to the state by the federal government or  
26 otherwise obtained by the state for use as state standards, shall, when  
27 the same shall have been certified as such by the national (~~bureau of~~  
28 ~~standards~~) institute of standards and technology, be the state

1 standards of weight and measure. The state standards shall be kept in  
2 a place designated by the director and shall not be removed from the  
3 said place except for repairs or for certification: PROVIDED, That  
4 they shall be submitted at least once in ten years to the national  
5 (~~bureau of standards~~) institute of standards and technology for  
6 certification.

7 **Sec. 6.** RCW 19.94.190 and 1989 c 354 s 36 are each amended to read  
8 as follows:

9 The director shall enforce the provisions of this chapter and shall  
10 (~~issue from time to time reasonable~~) adopt rules for enforcing and  
11 carrying out the purposes of this chapter. Such rules shall have the  
12 effect of law and may include (1) standards of net weight, measure, or  
13 count, and reasonable standards of fill for any commodity in package  
14 form, (2) (~~rules~~) the governing (~~the~~) technical and reporting  
15 procedures to be followed, and the report and record forms and marks of  
16 rejection to be used by the director and city sealers in the discharge  
17 of their official duties, (3) (~~rules~~) the governing technical test  
18 procedures, reporting procedures, record and reporting forms to be used  
19 by commercial firms when installing, repairing or testing commercial  
20 weights or measures, (4) (~~rules providing~~) the criteria that all  
21 weights and measures used by commercial firms in repairing or servicing  
22 commercial weighing and measuring devices shall be calibrated by the  
23 department and be directly traceable to state standards and shall be  
24 submitted to the department for calibration and certification as  
25 necessary and/or at such reasonable intervals as may be established or  
26 required by the director, (5) exemptions from the sealing or marking  
27 requirements of RCW 19.94.250 with respect to weights and measures of  
28 such character or size that such sealing or marking would be  
29 inappropriate, impracticable, or damaging to the apparatus in question,

1 (6) (~~rules~~) provisions that allow the director to establish fees for  
2 weighing, measuring, and providing calibration services performed by  
3 the weights and measures laboratory, with all money collected under  
4 this subsection paid to the director and deposited in an account within  
5 the agricultural local fund to be used for the repair and maintenance  
6 of weights and measures devices and other related functions, (7)  
7 exemptions from the requirements of RCW 19.94.200 and 19.94.210 for  
8 testing, with respect to classes of weights and measures found to be of  
9 such character that periodic retesting is unnecessary to continued  
10 accuracy. These (~~regulations~~) rules shall include specifications,  
11 tolerances, and (~~regulations~~) rules for weights and measures of the  
12 character of those specified in RCW 19.94.210, designed to eliminate  
13 from use, without prejudice to apparatus that conforms as closely as  
14 practicable to the official standards, those (a) that are not accurate,  
15 (b) that are of such construction that they are faulty, that is, that  
16 are not reasonably permanent in their adjustment or will not repeat  
17 their indications correctly, or (c) that facilitate the perpetration of  
18 fraud. The specifications, tolerances, and (~~regulations~~) rules for  
19 commercial weighing and measuring devices, together with amendments  
20 thereto, as recommended by the most recent edition of Handbook 44  
21 published by the national (~~bureau of standards Handbook 44, third~~  
22 ~~edition as published at the time of the enactment of this chapter~~)  
23 institute of standards and technology shall be the specifications,  
24 tolerances, and regulations for commercial weighing and/or measuring  
25 devices of the state. To promote uniformity, any supplements or  
26 amendments to Handbook 44 or any similar subsequent publication of the  
27 national (~~bureau of standards~~) institute of standards and technology  
28 shall be deemed to have been adopted under this section. The director  
29 may, however, within thirty days of the publication or effective date  
30 of Handbook 44 or any supplements, amendments, or similar publications

1 give public notice that a hearing will be held to determine if such  
2 publications should not be applicable under this section. The hearing  
3 shall be conducted under chapter 34.05 RCW. For the purpose of this  
4 chapter, apparatus shall be deemed to be "correct" when it conforms to  
5 all applicable requirements promulgated as specified in this section;  
6 all other apparatus shall be deemed to be "incorrect".

7       **Sec. 7.** RCW 19.94.200 and 1969 c 67 s 20 are each amended to read  
8 as follows:

9       The director shall test the standards of weight and measure  
10 procured by any city for which the appointment of a sealer of weights  
11 and measures is provided by this chapter, at least once every five  
12 years, and shall approve the same when found to be correct, and ((he))  
13 the director shall inspect such standards at least once every two  
14 years. ((He)) The director shall test all weights and measures used in  
15 checking the receipt or disbursement of supplies in every institution  
16 for the maintenance of which moneys are appropriated by the  
17 legislature, and ((he)) the director shall report ((his)) the findings,  
18 in writing, to the executive officer of the institution concerned.

19       **Sec. 8.** RCW 19.94.220 and 1969 c 67 s 22 are each amended to read  
20 as follows:

21       The director shall investigate complaints made ((to—him))  
22 concerning violations of the provisions of this chapter, and shall,  
23 upon his or her own initiative, conduct such investigations as ((he  
24 deems)) deemed appropriate and advisable to develop information on  
25 prevailing procedures in commercial quantity determination and on  
26 possible violations of the provisions of this chapter and to promote  
27 the general objective of accuracy in the determination and  
28 representation of quantity in commercial transactions.

1       **Sec. 9.** RCW 19.94.240 and 1969 c 67 s 24 are each amended to read  
2 as follows:

3       The director shall have the power to issue stop-use orders,  
4 stop-removal orders and removal orders with respect to weights and  
5 measures being, or susceptible of being, commercially used, and to  
6 issue stop-removal orders and removal orders with respect to packages  
7 or amounts of commodities kept, offered, exposed for sale, sold or in  
8 process of delivery, whenever in the course of his or her enforcement  
9 of the provisions of this chapter (~~(and/or)~~) or rules (~~(and~~  
10 ~~regulations)~~) adopted hereunder he or she deems it necessary or  
11 expedient to issue such orders. No person shall use, remove from the  
12 premises specified or fail to remove from any premises specified any  
13 weight, measure, or package or amount of commodity contrary to the  
14 terms of a stop-use order, stop-removal order or removal order issued  
15 under the authority of this section.

16       **Sec. 10.** RCW 19.94.250 and 1969 c 67 s 25 are each amended to read  
17 as follows:

18       The director shall reject and mark or tag as "rejected" such  
19 weights and measures as he or she finds upon inspection or test to be  
20 "incorrect" as defined in RCW 19.94.190, but which in his or her best  
21 judgment are susceptible of satisfactory repair: PROVIDED, That such  
22 sealing or marking shall not be required with respect to such weights  
23 and measures as may be exempted therefrom by (~~(a regulation)~~) rule of  
24 the director issued under the authority of RCW 19.94.190. The director  
25 may reject or seize any weights and measures found to be incorrect  
26 that, in his or her best judgment, are not susceptible of satisfactory  
27 repair.       Weights and measures that have been rejected may be  
28 confiscated and may be destroyed by the director if not corrected as

1 required by RCW 19.94.330 or if used or disposed of contrary to the  
2 requirements of said section.

3 **Sec. 11.** RCW 19.94.260 and 1969 c 67 s 26 are each amended to read  
4 as follows:

5 (1) With respect to the enforcement of this chapter and any other  
6 acts dealing with weights and measures that he or she is, or may be  
7 empowered to enforce, the director is authorized (~~(to arrest any~~  
8 ~~violator of the said chapter, and)~~) to seize for use as evidence  
9 incorrect or unsealed weights and measures or amounts or packages of  
10 commodities to be used, retained, offered, exposed for sale or sold in  
11 violation of the law.

12 (2) In the performance of his or her official duties the director  
13 is authorized at reasonable times during the normal business hours of  
14 the person using the weights and measures to enter into or upon any  
15 structure or premises where weights and measures are used or kept for  
16 commercial purposes. Should the director be denied access to any  
17 premises or establishment where such access was sought for the purposes  
18 set forth in this section, ((he)) the director may apply to any court  
19 of competent jurisdiction for a search warrant authorizing access to  
20 such premises or establishment for said purposes. The court may, upon  
21 such application, issue the search warrant for the purposes requested.

22 **Sec. 12.** RCW 19.94.290 and 1969 c 67 s 29 are each amended to read  
23 as follows:

24 A bond with sureties, to be approved by the appointing power, and  
25 conditioned upon the faithful performance of ((his)) duties and the  
26 safekeeping of any standards or equipment entrusted to ((his)) the city  
27 sealer's care, shall forthwith, upon his or her appointment, be given  
28 by each city sealer and deputy sealer in the penal sum of one thousand



1 dollars; the premium on such bond shall be paid by the city for which  
2 the officer in question is appointed.

3 **Sec. 13.** RCW 19.94.300 and 1969 c 67 s 30 are each amended to read  
4 as follows:

5 The city sealer and his or her deputy sealers when acting under his  
6 or her instructions and at his or her direction shall have the same  
7 powers and shall perform the same duties within the city for which  
8 appointed as are granted to and imposed upon the director by RCW  
9 19.94.210, 19.94.220, 19.94.230, 19.94.240, and 19.94.250.

10 **Sec. 14.** RCW 19.94.330 and 1969 c 67 s 33 are each amended to read  
11 as follows:

12 Weights and measures that have been rejected under the authority of  
13 the director or a city sealer shall remain subject to the control of  
14 the rejecting authority until such time as suitable repair or  
15 disposition thereof has been made as required by this section. The  
16 owners of such rejected weights and measures shall cause the same to be  
17 made correct within thirty days or such longer period as may be  
18 authorized by the rejecting authority; or, in lieu of this, may dispose  
19 of the same, but only in such a manner as is specifically authorized by  
20 the rejecting authority. Weights and measures that have been rejected  
21 shall not again be used commercially until they have been officially  
22 reexamined ~~((and found to be correct or until specific written~~  
23 ~~permission for such use is issued by the rejecting authority))~~ or until  
24 standardized corrective measures have been instituted as prescribed by  
25 rule as adopted by the department.

26 **Sec. 15.** RCW 19.94.340 and 1969 c 67 s 34 are each amended to read  
27 as follows:

1 Commodities in liquid form shall be sold only by liquid measure or  
2 by weight, and, except as otherwise provided in this chapter,  
3 commodities not in liquid form shall be sold only by weight, by measure  
4 of length or area, or by count: PROVIDED, That liquid commodities may  
5 be sold by weight and commodities not in liquid form may be sold by  
6 count only if such methods give accurate information as to the quantity  
7 of commodity sold: AND PROVIDED FURTHER, That the provisions of this  
8 section shall not apply (1) to commodities when sold for immediate  
9 consumption on the premises where sold, (2) to vegetables when sold by  
10 the head or bunch, (3) to commodities in containers standardized by a  
11 law of this state or by federal law, (4) to commodities in package form  
12 when there exists a general consumer usage to express the quantity in  
13 some other manner, (5) to concrete aggregates, concrete mixtures, and  
14 loose solid materials such as earth, soil, gravel, crushed stone, and  
15 the like, when sold by cubic measure, or (6) to unprocessed vegetable  
16 and animal fertilizer when sold by cubic measure. The director may  
17 issue such reasonable (~~regulations~~) rules as are necessary to assure  
18 that amounts of commodity sold are determined in accordance with good  
19 commercial practice and are so determined and represented to be  
20 accurate and informative to all interested parties.

21 **Sec. 16.** RCW 19.94.350 and 1969 c 67 s 35 are each amended to read  
22 as follows:

23 Except as otherwise provided in this chapter, any commodity in  
24 package form introduced or delivered for introduction into or received  
25 in intrastate commerce, kept for the purpose of sale, offered or  
26 exposed for sale or sold in intrastate commerce, shall bear on the  
27 outside of the package such definite, plain, and conspicuous  
28 declaration of (1) the identity of the commodity in the package unless  
29 the same can easily be identified through the wrapper or

1 container(~~(7)~~); (2) the net quantity of the contents in terms of  
2 weight, measure or count; and (3) in the case of any package not sold  
3 on the premises where packed, the name and place of business of the  
4 manufacturer, packer, or distributor, as may be prescribed by  
5 (~~regulation~~) rule issued by the director: PROVIDED, That in  
6 connection with the declaration required under (~~subdivision~~)  
7 subsection (2) of this section, neither the qualifying term "when  
8 packed" or any words of similar import, nor any term qualifying a unit  
9 of weight, measure, or count (for example, "jumbo", "giant", "full",  
10 "or over", and the like) that tends to exaggerate the amount of  
11 commodity in a package, shall be used: AND PROVIDED FURTHER, That  
12 under (~~clause~~) subsection (2) of this section the director shall by  
13 (~~regulation~~) rule establish (a) reasonable variations to be allowed,  
14 (b) exemptions as to small packages and (c) exemptions as to  
15 commodities put up in variable weights or sizes for sale to the  
16 consumer intact and either customarily not sold as individual units or  
17 customarily weighed or measured at time of sale to the consumer.

18 **Sec. 17.** RCW 19.94.420 and 1975 1st ex.s. c 51 s 1 are each  
19 amended to read as follows:

20 All fluid dairy products, including but not limited to whole milk,  
21 skimmed milk, cultured milk, sweet cream, sour cream and buttermilk and  
22 all fluid imitation and fluid substitute dairy products shall be  
23 packaged for retail sale only in units as provided by the director of  
24 the department of agriculture by (~~regulation~~) rule pursuant to the  
25 provisions of chapter 34.05 RCW.

26 **Sec. 18.** RCW 19.94.440 and 1969 c 67 s 44 are each amended to read  
27 as follows:

1       When a vehicle delivers to an individual purchaser a commodity in  
2 bulk, and the commodity is sold in terms of weight units, the delivery  
3 shall be accompanied by a duplicate delivery ticket with the following  
4 information clearly stated, in ink or other indelible marking equipment  
5 and, in clarity, equal to type or printing: (1) the name and address  
6 of the vendor, (2) the name and address of the purchaser, and (3) the  
7 net weight of the delivery expressed in pounds, and, if the net weight  
8 is derived from determinations of gross and tare weights, such gross  
9 and tare weights also shall be stated in terms of pounds. One of these  
10 tickets shall be retained by the vendor, and the other shall be  
11 delivered to the purchaser at the time of delivery of the commodity, or  
12 shall be surrendered on demand to the director or the deputy director  
13 or the inspector, or the sealer or deputy sealer, who, if he or she  
14 desires to retain it as evidence, shall issue a weight slip in lieu  
15 thereof for delivery to the purchaser: PROVIDED, That if the purchaser  
16 himself or herself carries away (~~his~~) the purchase, the vendor shall  
17 be required only to give the purchaser at the time of sale a delivery  
18 ticket stating the number of pounds of commodity delivered to (~~him~~)  
19 the purchaser.

20       **Sec. 19.** RCW 19.94.450 and 1969 c 67 s 45 are each amended to read  
21 as follows:

22       All solid fuels such as, but not limited to, coal, coke, charcoal,  
23 broiler chips, pressed fuels and briquets shall be sold by weight:  
24 PROVIDED, That solid fuels such as hogged fuel, sawdust and similar  
25 industrial fuels may be sold or purchased by cubic measure. Unless the  
26 fuel is delivered to the purchaser in package form, each delivery of  
27 coal, coke, or charcoal to an individual purchaser shall be accompanied  
28 by duplicate delivery tickets on which, in ink or other indelible  
29 substance, there shall be clearly stated (1) the name and address of

1 the vendor; (2) the name and address of the purchaser; and (3) the net  
2 weight of the delivery and the gross and tare weights from which the  
3 net weight is computed, each expressed in pounds. One of these tickets  
4 shall be retained by the vendor and the other shall be delivered to the  
5 purchaser at the time of delivery of the fuel, or shall be surrendered,  
6 on demand, to the director or his or her deputy or inspector or a city  
7 sealer or deputy sealer who, if he or she desires to retain it as  
8 evidence, shall issue a weight slip in lieu thereof for delivery to the  
9 purchaser: PROVIDED, That if the purchaser carries away ((his)) the  
10 purchase, the vendor shall be required only to give to the purchaser at  
11 the time of sale a delivery ticket stating the number of pounds of fuel  
12 delivered to ((him)) the purchaser.