

HOUSE BILL No. 2101

AN ACT concerning agriculture; relating to plant pests; creating the plant pest emergency response fund; weights and measures, unlawful acts, annual testing requirements and recognized systems; amending K.S.A. 2-2126, 83-145, 83-202, 83-219 and 83-404 and K.S.A. 2000 Supp. 83-304 and repealing the existing sections.

*Be it enacted by the Legislature of the State of Kansas:*

New Section 1. (a) There is hereby created a plant pest emergency response fund in the state treasury. Such fund shall be funded by a fee assessed in addition to the fees assessed a nursery dealer or nursery certificate holder under article 21 of chapter 2 of the Kansas Statutes Annotated. The additional fee shall be fixed by rule and regulation promulgated by the secretary of agriculture, except that such additional fee shall not exceed \$5 annually on each nursery dealer and nursery certificate holder. The secretary is authorized and empowered to collect the fees provided in this section. When the total amount of fees deposited in the fund is equal to or exceeds \$15,000, the secretary shall not collect any such fees as provided in this section. When expenditures made from the fund result in the total amount of the fees deposited in the fund to be less than \$15,000, the secretary may resume the assessment and collection of such fees as provided in this section.

(b) The secretary is authorized and empowered to make expenditures from the plant pest emergency response fund and that in the discretion of the secretary mitigate pests that have been identified by the secretary as high risk pests having the potential to damage agriculture, horticulture or the environment. Such expenditures may include the costs of enforcement to protect against high risk pests identified by the secretary. All expenditures from such fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary or by a designee of the secretary.

(c) The plant pest emergency response fund shall be a fund separate and distinct from the entomology fee fund referred to in K.S.A. 2-2128, and amendments thereto.

(d) The provisions of this section shall be part of and supplemental to the plant pest act.

Sec. 2. K.S.A. 2-2126 is hereby amended to read as follows: 2-2126. The ~~board~~ secretary shall promulgate, amend and repeal such rules and regulations as ~~may be~~, *in the discretion of the secretary*, are necessary for the efficient execution of the provisions of ~~this~~ *the plant pest act*.

Sec. 3. K.S.A. 83-145 is hereby amended to read as follows: 83-145. (a) The secretary of agriculture, or the secretary's authorized representative, is authorized to test all weighing and measuring devices used in the retail sale of liquefied petroleum gas, and shall reject all such devices which are found (a) to be inaccurate and (b) to not clearly indicate the quantity of liquefied petroleum gas in kilograms or pounds, liters or gallons, cubic feet or cubic meters or other unit approved by the secretary of agriculture, or the secretary's authorized representative. ~~It shall be unlawful to use a weighing or measuring device for determining quantities of liquefied petroleum gas which has been rejected by the secretary of agriculture, or the secretary's authorized representative.~~ The secretary of agriculture, or the secretary's authorized representative, shall conspicuously mark all rejected devices, ~~which~~. *Such* mark shall not be removed or defaced except upon authorization of the secretary of agriculture or the secretary's authorized representatives. It shall be unlawful to use a vapor meter dial which is not equipped with a cubic foot indicator for testing the accuracy of the meter.

(b) It shall be unlawful to use a liquid meter for measuring the volume, in gallons, of liquefied petroleum gas for retail sale from delivery vehicles unless such meter is equipped with a ticket printer for use in issuance of printed tickets showing the volume, in gallons, of the liquefied petroleum gas delivered.

Sec. 4. K.S.A. 83-202 is hereby amended to read as follows: 83-202.

(a) Except as provided further:

(1) 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 either one or both of these systems shall be used for all commercial purposes in the state.

(2) The following standards and requirements shall apply to commercial weighing and measuring devices:

(A) “The standards of the national conference on weights and measures” published in the national institute of standards and technology handbook 44 entitled specifications, tolerances, and other technical requirements for weighing and measuring devices as published on October, 1994 or later versions as established in rules and regulations adopted by the secretary, *except those vehicle scales installed prior to the effective date of this act and used solely for the purpose of weighing aggregate products shall be exempt from the provisions contained in section 2.20 scales, table 6 of such handbook. Such aggregate product scales shall have a minimum tolerance of +/- 100 pounds. Such exception shall be in effect for a period of two years from the effective date of this act;*

(B) “the uniform laws and regulations of the national conference on weights and measures” published in the national institute of standards and technology handbook 130 regarding packaging and labeling, the method of sale of commodities, national type evaluation regulation, motor fuel inspection and motor fuel regulation, as published on December, 1994 or later versions as established in rules and regulations adopted by the secretary;

(C) “checking the net contents of packaged goods” published in the national institute of standards and technology handbook 133, third edition, as published on September, 1988 or later versions as established in rules and regulations adopted by the secretary;

(D) “checking the net contents of packaged goods” published in the national institute of standards and technology handbook 133, third edition, supplement 4, as published on October, 1994 or later versions as established in rules and regulations adopted by the secretary; and

(E) any other handbooks or sections thereof as adopted by the secretary by rules and regulations.

(b) Whenever there exists an inconsistency between the provisions of chapter 83 of the Kansas Statutes Annotated, and amendments thereto, and any of the handbooks adopted by reference, the requirements of chapter 83 of the Kansas Statutes Annotated, and amendments thereto, shall control.

Sec. 5. K.S.A. 83-219 is hereby amended to read as follows: 83-219.

(a) It shall be unlawful for any ~~owner of a commercial weighing or measuring device~~ *person*:

(1) To offer or expose for sale, or to sell or otherwise dispose of any weight, measure or weighing or measuring device that does not meet the tolerances and specifications required by chapter 83 of the Kansas Statutes Annotated, and amendments thereto, or which has been rejected without first obtaining the written authorization of the secretary;

(2) to use or possess a weight, measure or weighing or measuring device that is used for or intended to be used for commercial purposes which does not meet the tolerance and specifications required by chapter 83 of the Kansas Statutes Annotated, and amendments thereto, or that does not conform to the standard authorized by the secretary for determining the quantity of any commodity or article of merchandise, for the purpose of:

(A) Buying or selling any commodity or article of merchandise;

(B) computation of any charge for services rendered on the basis of weight or measure;

(C) determining weight or measure, either when a charge is made for such determination or where no charge is made for use of such weight, measure, weighing or measuring device;

(3) except as allowed in K.S.A. 83-225, and amendments thereto, to break or remove any tag, mark or seal placed on any weighing or measuring device by the secretary or a county or city inspector of weights and measures, without specific written authorization from the proper authority or to use a weighing or measuring device after the lapse of the authorized period following the placing of a rejection tag thereon by the secretary, unless further extension of time for any repair purposes is first obtained from the secretary;

(4) to sell, offer or expose for sale, less than the represented quantity of any commodity, thing or service;

(5) to take or attempt to take more of the represented quantity of any commodity, thing or service when the buyer furnishes the weight, measure or weighing or measuring device by which the amount of any commodity, thing or service is determined;

(6) to keep for the purpose of sale, or to offer or expose for sale, or to sell any commodity in a manner contrary to the law or contrary to any rule and regulation;

(7) to use in retail trade, except in preparation of packages of merchandise put up in advance of sale, a weighing or measuring device that is not so positioned that its indications may be accurately read and the weighing or measuring operation observed from a reasonable customer position;

(8) to violate any of the provisions of chapter 83 of the Kansas Statutes Annotated, and amendments thereto, or rules and regulations adopted thereunder, for which a specific penalty is not provided;

(9) to sell or offer for sale, or use or possess for the purpose of selling or using any device or instrument to be used or calculated to falsify any weight or measure;

(10) to dispose of any rejected weight or measure in a manner contrary to law or rules and regulations;

(11) to expose for sale, offer for sale or sell any commodity in package form, without it being so wrapped, or the container so made, formed or filled, that it will not mislead the purchaser as to the quantity of the contents of the package;

(12) to expose for sale, offer for sale or sell any commodity in any container where the contents of the container fall below such reasonable standard of fill as may have been prescribed for the commodity in question by the secretary;

(13) to misrepresent the price of any commodity or service sold, offered, exposed or advertised for sale by weight, measure or count, nor represent the price in any manner calculated or tending to mislead or in any way deceive any person;

(14) to misrepresent, or represent in a manner calculated or tending to mislead or deceive an actual or prospective purchaser, the price of an item offered, exposed or advertised for sale at retail;

(15) to compute or attempt to compute at the time of sale of an item, a value which is not a true extension of a price per unit which is then advertised, posted or quoted;

(16) to charge or attempt to charge, at the time of the sale of an item or commodity, a value which is more than the price which is advertised, posted or quoted;

(17) to alter a weight certificate, use or attempt to use any such certificate for any load or part of a load or for articles or things other than for which the certificate is given, or, after weighing and before the delivery of any articles or things so weighted, alter or diminish the quantity thereof;

(18) to hinder or obstruct in any way the secretary or any of the secretary's authorized agents in the performance of the secretary's official duties under chapter 83 of the Kansas Statutes Annotated, and amendments thereto or any rules and regulations adopted thereunder;

(19) to fail to follow the standards and requirements established in K.S.A. 83-202, and amendments thereto, or any rules and regulations adopted thereunder;

(20) to fail to pay all fees and penalties as prescribed by chapter 83 of the Kansas Statutes Annotated, and amendments thereto, and the rules and regulations adopted thereunder;

(21) to fail to keep or make available for examination or provide to the secretary all inspection reports, test reports and any other service reports or other information on any device owned or operated by the owner or any agent or employee of the owner and other information necessary for the enforcement of chapter 83 of the Kansas Statutes Annotated, and amendments thereto or any rules and regulations adopted thereunder, and as required by the secretary;

(22) to fail to have any commercial weight, measure or weighing and measuring device tested as required by chapter 83 of the Kansas Statutes Annotated, and amendments thereto or any rules and regulations adopted thereunder;

(23) to sell or offer or expose for sale liquefied petroleum gas in packages or containers which do not bear a statement as to tare and net weight as required by chapter 83 of the Kansas Statutes Annotated, and amendments thereto or any rules and regulations adopted thereunder, or packages or containers which bear a false statement as to weights;

(24) to sell, use, remove, or otherwise dispose of, or fail to remove from the premises specified, any weighing or measuring device or package or commodity contrary to the terms of any order issued by the secretary; ~~and~~

(25) to violate any order issued by the secretary pursuant to chapter 83 of the Kansas Statutes Annotated, and amendments thereto; *and*

(26) *to prohibit a buyer or seller from observing the weighing or operation of any transaction to which such buyer or seller is a party.*

(b) It shall be unlawful for any service company or technical representative to:

(1) Act as or represent such person's self to be a technical representative without having a valid license issued by the department of agriculture;

(2) certify a device as correct unless the device meets the tolerances and specifications as required by chapter 83 of the Kansas Statutes Annotated, and amendments thereto, or any rules and regulations adopted thereunder;

(3) hinder or obstruct in any way the secretary in the performance of the secretary's official duties under chapter 83 of the Kansas Statutes Annotated, and amendments thereto or any rules and regulations adopted thereunder;

(4) fail to follow the standards and requirements set forth in K.S.A. 83-202, and amendments thereto, or any rules and regulations adopted thereunder;

(5) fail to complete the testing or placing-in-service report in its entirety and to report the accurate description of the parts replaced, adjusted, reconditioned or work performed;

(6) file a false or fraudulent service company or technical representative application or reports to the secretary;

(7) fail to pay all fees and penalties as prescribed by chapter 83 of the Kansas Statutes Annotated, and amendments thereto, and the rules and regulations adopted thereunder;

(8) fail to keep or make available for examination in an accessible and legible manner or provide to the secretary in a legible manner all inspection reports, test reports, and any other service or report work information on any device which the service company or an agent or employee performed work on and other information necessary for the enforcement of chapter 83 of the Kansas Statutes Annotated, and amendments thereto or any rules and regulations adopted thereunder; *or*

(9) *sell, offer or expose for sale a weighing or measuring device intended to be used commercially, which is not traceable to a national type evaluation program certificate of conformance.*

(c) For the purpose of paragraph (a)(4), the selling and delivery of a stated quantity of any commodity shall be prima facie evidence of representations on the part of the seller that the quantity sold and delivered was the quantity bought by the purchaser.

(d) Violation of this section shall be deemed a deceptive act and practice as defined by K.S.A. 50-626, and amendments thereto. Violations of the provisions of K.S.A. 83-219, and amendments thereto, may be enforced by the secretary under the administrative provisions of chapter 83 of the Kansas Statutes Annotated, and amendments thereto, or by the attorney general or a county or district attorney under the Kansas consumer protection act.

Sec. 6. K.S.A. 2000 Supp. 83-304 is hereby amended to read as follows: 83-304. (a) Except as provided by subsection (e), the owner or operator of a weighing and measuring device which is used commercially shall have such weighing and measuring device tested and inspected at least annually for accuracy. The test shall be conducted by either a licensed technical representative employed by a licensed service company or by an authorized representative of any city or county which has established a department of public inspection of weights and measures pursuant to K.S.A. 83-210, and amendments thereto, or by the secretary,

which inspects such weighing and measuring device in accordance with rules and regulations adopted by the secretary. If upon inspection by the secretary or an authorized representative of the secretary, it is found that the weighing and measuring device has not been tested and inspected for accuracy and approved within the preceding 365 days, the secretary or the authorized representative of the secretary shall take the weighing and measuring device out of service pursuant to the provisions of K.S.A. 83-215, and amendments thereto. Except as provided further, the test weights or equipment used by the service company shall have been approved and sealed by the secretary pursuant to K.S.A. 83-214, and amendments thereto, within 365 days preceding the date of the tests. Test weights or equipment which has the nominal capacity of 250 pounds or greater, are housed in a grain elevator or similar structure and are used to test scales in grain elevators or similar facilities shall have been approved and sealed by the secretary pursuant to K.S.A. 83-214, and amendments thereto, within three calendar years preceding the date of the test. Except at the option of the city or county which has an established department of public inspection of weights and measures, tests and inspections shall be at the expense of the owner or operator of the weighing and measuring device. In any city or county which has a department of public inspection which inspects such weighing and measuring device, the test may be conducted by an authorized representative of the city or county weights and measures department. Farmers or ranchers who own and operate a weighing and measuring device used in private treaty transactions are exempt from the annual testing requirements. *Volumetric provers which are stationary or which exceed the testing capacity of the state metrology lab due to engineering design or the capacity of the prover are exempt from the annual testing requirement.*

(b) A service company or the city or county department of public inspection of weights and measures or an authorized representative of the secretary which conducts tests pursuant to this section shall, at the time of testing and inspection, promptly furnish to the owner or operator of the weighing and measuring device a report showing the results of the tests and inspection. The city or county department of public inspection of weights and measures *and service company* reports shall also be sent to the secretary, as required by rules and regulations adopted by the secretary, ~~however~~. No report shall be furnished later than 10 days after the test or inspection of the device has occurred.

(c) Subject to the provisions of K.S.A. 83-215, and amendments thereto, the owner or operator of a weighing and measuring device which is found to be out of the tolerances or specifications required by chapter 83 of the Kansas Statutes Annotated, and amendments thereto or any rules and regulations adopted thereunder, at the time of testing shall withdraw immediately the weighing and measuring device from further use until the necessary corrections, adjustments or repairs are made and the weighing and measuring device is determined to be accurate by a service company or the city or county department of public inspection of weights and measures or an authorized representative of the secretary. Weighing and measuring devices which have been repaired or serviced shall meet the tolerances and specifications established in chapter 83 of the Kansas Statutes Annotated, and amendments thereto, and those rules and regulations adopted by the secretary prior to being placed or returned to service. The service company or the city or county department of public inspection of weights and measures shall notify the secretary of any weighing and measuring devices which are found not to comply with such tolerances and specifications and are thus inaccurate and cannot be adjusted, repaired or serviced so as to comply with the standards and tolerances established in chapter 83 of the Kansas Statutes Annotated, and amendments thereto. Such notification shall be as required by the secretary, pursuant to rules and regulations, ~~however~~. Such notification shall be furnished to the department no later than 10 days after the service company or city or county department of public inspection of weights and measures has found the weighing and measuring device to be in noncompliance with the tolerance and specifications required for such weighing and measuring device. A copy of the report prepared by the service company or city or county department of public inspection of weights and measures or the secretary showing the results of the weighing and meas-

uring device test and the work done to correct any deficiencies shall be filed with the secretary by the service company.

(d) Each service company shall be required to keep at such company's corporate headquarters or at such company's resident agent's office a copy of all reports regarding the installation, repair, calibration and other work the service company or the technical representatives employed by the service company performed on the commercial weighing and measuring devices. Such reports shall be legible and maintained in an accessible manner and for a period of time as established by the secretary pursuant to rules and regulations. The owner or operator of a weighing and measuring device shall also be required to retain copies of all reports regarding the installation, repair or adjustment or any of the aforementioned done to the weighing and measuring device at the site where the measuring and weighing device is used. Such reports shall be legible and maintained in an accessible manner and for a period of time as established by the secretary pursuant to rules and regulations.

(e) The secretary may adopt rules and regulations providing for inspection of vapor meters at intervals less frequently than annually if the secretary determines that annual inspections are not necessary to protect the public interest. In adopting any such rules and regulations, the secretary shall take into consideration the standard for inspections of vapor meters adopted by the national institute of standards and technology of the United States department of commerce.

Sec. 7. K.S.A. 83-404 is hereby amended to read as follows: 83-404.

(a) The owner or operator of a dispensing device which is used for commercial purposes shall have such device tested and inspected ~~at least annually for accuracy~~ *at least once within every 18-month period*. The test shall be conducted by either an authorized representative of any city or county which has established a department of public inspection of weights and measures pursuant to K.S.A. 83-210, and amendments thereto, or by the secretary, which inspects such dispensing devices in accordance with rules and regulations adopted by the secretary. If upon inspection by the secretary, it is found that the dispensing device has not been tested and inspected for accuracy and approved within the preceding ~~12 calendar~~ 18 months, the secretary shall take the dispensing device out of service pursuant to the provisions of K.S.A. 83-215, and amendments thereto. The test weights and measures used by the service company shall have been approved and sealed by the secretary pursuant to K.S.A. 83-214, and amendments thereto, every 365 days. Except at the option of the city or county which has an established department of public inspection of weights and measures, annual tests and inspections shall be at the expense of the owner or operator. In any city or county which has a department of public inspection of weights and measures which annually inspects such dispensing devices, the tests may be conducted by an authorized representative of such city or county weights and measures department. Farmers or ranchers who own and operate a dispensing device used in private treaty transactions are exempt from the annual testing requirements.

(b) The city or county department of public inspection of weights and measures or the secretary which conducts tests pursuant to this section, at the time of testing and inspection, shall promptly furnish to the owner or operator a report showing the results of the tests and inspection. Such reports shall also be sent to the secretary, as required by rules and regulations adopted by the secretary, however, no report shall be furnished later than 10 days after the test or inspection of such device has occurred.

(c) Subject to the provisions of K.S.A. 83-215, and amendments thereto, the owner and operator of a dispensing device which is found to be inaccurate at the time of testing shall withdraw immediately the device from further use until the necessary corrections, adjustments or repairs are made and the device is determined to be accurate by a service company or the city or county weights and measures department or an authorized representative of the secretary. The devices which have been repaired or serviced shall meet the tolerances and specifications adopted by the secretary by rules and regulations. The service company or the city or county shall notify the secretary of any devices which are found not to comply with such tolerances and specifications and those which are not able to be serviced or repaired so as to comply with such tolerances and

specifications. The service company shall report to the secretary within the time frames and in a manner established in rules and regulations adopted by the secretary of any dispensing device which has been installed, repaired, calibrated or fails to comply with the required tolerances and specifications.

(d) Each service company shall be required to keep at such company's corporate headquarters or at such company's resident agent's office a copy of all reports regarding the installation, repair, calibration and other work the service company or the technical representatives employed by the service company performed on the commercial dispensing devices. Such reports shall be legible and maintained in an accessible manner and for a period of time as established by the secretary pursuant to rules and regulations. The owner or operator of a dispensing device shall also be required to retain copies of all reports regarding installation, repair or adjustment or any of the aforementioned done to the dispensing device at the site where the dispensing device is used. Such reports shall be legible and maintained in an accessible manner and for a period of time as established by the secretary pursuant to rules and regulations.

Sec. 8. K.S.A. 2-2126, 83-145, 83-202, 83-219 and 83-404 and K.S.A. 2000 Supp. 83-304 are hereby repealed.

Sec. 9. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

\_\_\_\_\_  
HOUSE adopted  
Conference Committee Report \_\_\_\_\_

\_\_\_\_\_  
*Speaker of the House.*

\_\_\_\_\_  
*Chief Clerk of the House.*

Passed the SENATE  
as amended \_\_\_\_\_

SENATE adopted  
Conference Committee Report \_\_\_\_\_

\_\_\_\_\_  
*President of the Senate.*

\_\_\_\_\_  
*Secretary of the Senate.*

APPROVED \_\_\_\_\_

\_\_\_\_\_  
*Governor.*