

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **HB 2490** submits the following report:

The Senate recedes from all of its amendments to the bill, and your committee on conference further agrees to amend the bill as printed as introduced, as follows:

On page 4, following line 10, by inserting:

"Sec. 5. K.S.A. 2015 Supp. 83-214 is hereby amended to read as follows: 83-214. (a) The secretary may try and prove weights, measures, balances and other measuring devices on request for any person, corporation or institution, and when the same are found or made to conform to the state standards, and otherwise fulfill such reasonable requirements as the secretary may make, the secretary, or an authorized representative of the secretary, may seal the same with a seal which is kept for that purpose.

(b)(1) Except as otherwise provided by statute, the secretary, or the authorized representative of the secretary, may charge for services provided by the department and other necessary and incidental expenses or both incurred in conjunction with the testing and proving of weights, measures and other devices ~~at a rate per hour or fraction thereof and other necessary and incidental expenses which are fixed by rules and regulations adopted by the secretary of agriculture, except that (1) the charges for services provided by the metrology lab shall not exceed \$50 per hour or fraction thereof, and (2) in the case of the head house scale program such charges shall not exceed \$100 per hour or fraction thereof.~~ rates prescribed pursuant to this section. An in-state rate shall be charged to licensed service companies that have licensed technical representatives performing service work in Kansas. An additional fee for adjustment of

any weight, measure or other device may be assessed. The rates charged by the secretary shall be as follows:

<u>Category</u>	<u>In-State rate</u>	<u>In-State rate for quantities of 10 or more</u>	<u>In-State rate for quantities of 100 or more</u>	<u>Standard rate</u>	<u>Standard rate for quantities of 10 or more</u>	<u>Adjustment fee per piece</u>
<u>Large Mass (< 1,250 lbs through ≥ 100 lbs, 500 kg through 50 ≥ kg)</u>	<u>\$16</u>	<u>\$8</u>	<u>\$6</u>	<u>\$20</u>	<u>\$10</u>	<u>\$5</u>
<u>Medium Mass (< 100 lbs through > 20 lbs, < 50 kg through 10 ≥ kg)</u>	<u>\$6</u>	<u>\$4</u>	<u>\$2</u>	<u>\$10</u>	<u>\$5</u>	<u>\$5</u>
<u>Small Mass (< 20 lbs through > 0.001 lbs, < 10 kg through 1 mg)</u>	<u>\$6</u>	<u>\$4</u>	<u>\$2</u>	<u>\$10</u>	<u>\$5</u>	<u>\$5</u>
<u>Small Mass Set (< 10 lbs through > 0.001 lbs, < 5 kg through ≥ 20 mg)</u>	<u>\$35</u>	<u>\$35</u>		<u>\$45</u>	<u>\$45</u>	<u>\$5</u>
<u>Precision Mass (1,000 lbs through 0.001 lbs, 30 kg through 1 mg) ASTM 2, 3.4. 5</u>	<u>\$20</u>	<u>\$20</u>		<u>\$30</u>	<u>\$30</u>	<u>\$40</u>
<u>Precision Mass Echelon I (30 kg through 1 mg) ASTM 1 or ASTM 0</u>	<u>\$40</u>	<u>\$40</u>		<u>\$60</u>	<u>\$60</u>	
<u>Extra Large Headhouse Weights (3,000 lbs through > 1,250 lbs)</u>	<u>\$40</u>	<u>\$40</u>		<u>\$50</u>	<u>\$50</u>	<u>\$5</u>
<u>Weight Carts (6,000 lbs through 2,000 lbs)</u>	<u>\$80</u>	<u>\$80</u>		<u>\$100</u>	<u>\$100</u>	<u>\$25</u>
<u>Weight Carts (8,000 lbs)</u>	<u>\$200</u>	<u>\$200</u>		<u>\$220</u>	<u>\$220</u>	<u>\$25</u>
<u>Large Volume (100 gal or less)</u>	<u>\$85</u>	<u>\$85</u>		<u>\$100</u>	<u>\$100</u>	<u>\$25</u>
<u>Large Volume (greater than 100 gal and less than or equal to 200 gal)</u>	<u>\$185</u>	<u>\$185</u>		<u>\$200</u>	<u>\$200</u>	<u>\$25</u>
<u>Large Volume (greater than 200 gal and less than or equal to 500 gal)</u>	<u>\$285</u>	<u>\$285</u>		<u>\$300</u>	<u>\$300</u>	<u>\$25</u>
<u>Large Volume (greater than 500 gal)</u>	<u>\$485</u>	<u>\$485</u>		<u>\$500</u>	<u>\$500</u>	<u>\$25</u>
<u>Small Volume (5 gal)</u>	<u>\$50</u>	<u>\$50</u>		<u>\$70</u>	<u>\$70</u>	<u>\$10</u>
<u>Gravimetric Volume (5 gal)</u>	<u>\$180</u>	<u>\$180</u>		<u>\$200</u>	<u>\$200</u>	
<u>Thermometry (-35°C through 150°C)(Based on a per point calibration)</u>	<u>\$90</u>	<u>\$75</u>		<u>\$110</u>	<u>\$90</u>	

(2) The secretary may charge the following additional fees for preparing items for shipment:

<u>Category</u>	<u>Rate</u>
<u>Large Mass (< 1,250 lbs through > 100 lbs, 500 kg through 50 > kg)</u>	<u>\$20</u>
<u>Medium Mass (< 100 lbs through > 20 lbs, < 50 kg through > 10 kg)</u>	<u>\$30</u>
<u>Small Mass (< 20 lbs through > 0.001 lbs, < 10 kg through 1 mg)</u>	<u>\$20</u>
<u>Small Mass Set (< 10 lbs through > 0.001 lbs, < 5 kg through > 1 mg)</u>	<u>\$20</u>
<u>Precision Mass (1,000 lbs through 0.001 lbs, 30 kg through 1 mg)</u>	<u>\$10</u>
<u>Precision Mass Set (1,000 lbs through 0.001 lbs, 30 kg through 1 mg)</u>	<u>\$20</u>
<u>Extra Large Headhouse Weights (3,000 lbs through > 1,250 lbs)</u>	<u>\$40</u>
<u>Weight Carts (8,000 lbs through 2,000 lbs)</u>	<u>\$100</u>
<u>Large Volume (1,000 gal through 20 gal)</u>	<u>\$100</u>
<u>Large Volume LPG (1,000 gal through 20 gal)</u>	<u>\$100</u>
<u>Small Volume (5 gal)</u>	<u>\$20</u>
<u>Gravimetric Volume (5 gal)</u>	<u>\$20</u>
<u>Thermometry (-35°C through 150°C)(Based on a 2 point calibration)</u>	<u>\$20</u>

(3) For any service provided pursuant to this subsection that is not listed in the fee schedules in subsections (b)(1) and (b)(2), the secretary shall determine that fee to be charged.

(4) For any service provided pursuant to this subsection, the secretary may charge a minimum fee of \$50 per invoice. The secretary may charge for subsistence and transportation of personnel and equipment to such point and return. Such charges shall be set by rules and regulations adopted by the secretary of agriculture.

(5) The secretary may fix the manner in which any charges made pursuant to this

subsection are collected.

(c) The secretary shall remit all moneys received under subsection (b) to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the weights and measures fee fund which is hereby created. All expenditures from the weights and measures fee 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 person designated by the secretary.

(d) Except as provided in K.S.A. 83-301 through 83-311, and amendments thereto, nothing in article 2 of chapter 83 of the Kansas Statutes Annotated, and amendments thereto, shall prohibit the owner of a weighing or measuring device or the owner's employee or agent from servicing or repairing such device. However, if such device is found out of tolerance and is rejected by the department of agriculture, the owner is responsible for repairing the device within the time specified on the rejection tag and notifying the department when the device is repaired and in operation. The owner shall pay a fee commensurate with the expense incurred by the secretary in performing the follow-up inspections or tests.

Sec. 6. K.S.A. 2015 Supp. 83-219 is hereby amended to read as follows: 83-219. (a) It shall be unlawful for any 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;

(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 knowingly:

(1) Act as or represent such person's self to be a technical representative without having a valid license issued by the Kansas 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~~ subsection (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. 7. K.S.A. 2015 Supp. 83-302 is hereby amended to read as follows: 83-302. (a) (1) Each person, other than an authorized representative of the secretary or an authorized representative of a city or county department of public inspection of weights and measures established pursuant to K.S.A. 83-210, and amendments thereto, desiring to operate and perform testing and other services as a company in Kansas shall apply to the secretary for a service company license, on a form to be supplied by the secretary, and shall obtain such license from the secretary before operating and performing testing or other services as a service company. Each service company shall obtain a license for each place of business maintained in Kansas and shall pay a license application fee of \$50, ~~or commencing July 1, 2002, and ending June 30, 2010, a fee of \$100 and thereafter an annual license renewal application fee of \$50, or commencing July 1, 2002, and ending June 30, 2010, a fee of \$100 for each place of business.~~

(2) Beginning with the 2017 license year, the secretary may, by order, set the license application fee, not to exceed the maximum fee stated herein:

(A) Commencing July 1, 2017, the license application fee shall not exceed \$100.

(B) Commencing July 1, 2019, the license application fee shall not exceed \$110.

(C) Commencing July 1, 2021, the license application fee shall not exceed \$120.

(D) Commencing July 1, 2023, and thereafter, the license application fee shall not

exceed \$130.

(3) Each service company license shall expire on June 30 following issuance, shall be void unless renewed prior to the expiration and shall not be transferable. The license renewal fee shall be equal to the license application fee as provided in this section for each place of business.

(b) If any service company maintains any out-of-state places of business which the company operates in serving Kansas patrons, the service company seeking to obtain or renew a license under this section shall list in the application such places of business and the firm names under which the company operates at each such place of business. If any out-of-state place of business is established by a service company after being licensed under this section, the licensee shall supply such information to the secretary before any work is performed in Kansas from such out-of-state location. Each nonresident service company shall designate a resident agent upon whom service of notice or process may be made to enforce the provisions of chapter 83 of the Kansas Statutes Annotated, and amendments thereto, or any liabilities arising from operations thereunder. Each nonresident service company which maintains no established place of business in Kansas shall obtain a license under this section for each out-of-state place of business and shall list on the application the firm name or names for each place of business from which the service company intends to operate.

(c)(1) Each technical representative shall be licensed annually by the secretary. Except as provided in paragraph (2), each technical representative shall be required to attend continuing education seminars on an annual basis as required by rules and regulations adopted by the secretary and to pass a reasonable examination prescribed by the secretary each year prior to being licensed. ~~The Kansas department of agriculture shall be authorized to charge a fee to the~~

~~attendees of the continuing education seminars sponsored by the agency. The amount charged shall be no more than is necessary to cover the expenses incurred in providing the seminar. Each technical representative's license shall expire on June 30 following the issuance of the license and shall be void unless renewed prior to the expiration.~~

(2) Beginning on July 1, 2017, each technical representative who has had 10 years of continuous licensure with no administrative enforcement action adjudicated against such technical representative during such 10-year period shall be eligible to obtain a three-year license. The secretary shall implement, by order, the fee for such three-year license, which shall be an amount not to exceed \$300. Each technical representative holding a three-year license shall be required to complete continuing education as described in subsection (c)(1) at a frequency not to exceed once per three-year period. The secretary may promulgate rules and regulations to require any technical representative who has been adjudicated in violation of this act or any rules and regulations promulgated by the secretary, to seek renewal of a license on an annual basis and may establish criteria for reinstatement of eligibility for a three-year license.

(3) The department of agriculture is authorized to charge a fee to the attendees of continuing education seminars sponsored by the department. The amount of such fee shall be no more than is necessary to cover the expenses incurred by providing the seminar.

(d) No service company license may be issued or renewed under this section until the applicant's weights or measures, or both have been tested for accuracy and sealed by the secretary. The secretary is authorized to accept a certification of the accuracy of the applicant's weights or measures issued by the national institute of standards and technology or by a weights and measures laboratory certified by the national institute of standards and technology in lieu of

a test by the secretary, if such certificate shows that the weights or measures have been tested within the last 365 days preceding the license application.

(e) The secretary shall remit all moneys received under this section to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the weights and measures fee fund.";

And by renumbering sections accordingly;

Also on page 4, in line 11, by striking "and" and inserting a comma; also in line 11, after "2-2117" by inserting ", 83-214, 83-219 and 83-302";

On page 1, in the title, in line 1, after "concerning" by inserting "the department of agriculture; relating to"; in line 2, after "containment;" by inserting "weights and measures; charging for certain services; unlawful acts; technical representatives;"; in line 3, by striking the first "and" and inserting a comma; also in line 3, after "2-2117" by inserting ", 83-214, 83-219 and 83-302";

And your committee on conference recommends the adoption of this report.

Conferees on part of Senate

Conferees on part of House