

(Corrected)

Session of 2016

HOUSE BILL No. 2712

By Committee on Appropriations

3-2

1 AN ACT concerning weights and measures; relating to charging for
2 services; unlawful acts; technical representatives; amending K.S.A.
3 2015 Supp. 83-214, 83-219 and 83-302 and repealing the existing
4 sections.

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

7 Section 1. K.S.A. 2015 Supp. 83-214 is hereby amended to read as
8 follows: 83-214. (a) The secretary may try and prove weights, measures,
9 balances and other measuring devices on request for any person,
10 corporation or institution, and when the same are found or made to
11 conform to the state standards, and otherwise fulfill such reasonable
12 requirements as the secretary may make, the secretary, or an authorized
13 representative of the secretary, may seal the same with a seal which is kept
14 for that purpose.

15 (b) (1) Except as otherwise provided by statute, the secretary, or the
16 authorized representative of the secretary, may charge for services
17 provided by the department and other necessary and incidental expenses or
18 both incurred in conjunction with the testing and proving of weights,
19 measures and other devices at a rate per hour or fraction thereof and other
20 necessary and incidental expenses which are fixed by rules and regulations
21 adopted by the secretary of agriculture, except that (1) the charges for
22 services provided by the metrology lab shall not exceed \$50 per hour or
23 fraction thereof, and (2) in the case of the head house scale program such
24 charges shall not exceed \$100 per hour or fraction thereof. rates
25 prescribed pursuant to this section. An in-state rate shall be charged to
26 licensed service companies that have licensed technical representatives
27 performing service work in Kansas. An additional fee for adjustment of
28 any weight, measure or other device may be assessed. The rates charged
29 by the secretary shall be as follows:
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Category	In-State rate	In-State rate for quantities of 10 or more	In-State rate for quantities of 100 or more	Standard rate	Standard rate for quantities of 10 or more	Adjustment fee per piece
Large Mass ($\leq 1,250$ lbs through ≥ 100 lbs, 500 kg through $50 \geq$ kg)	\$16	\$8	\$6	\$20	\$10	\$5
Medium Mass (< 100 lbs through ≥ 20 lbs, < 50 kg through $10 \geq$ kg)	\$6	\$4	\$2	\$10	\$5	\$5
Small Mass (< 20 lbs through ≥ 0.001 lbs, < 10 kg through 1 mg)	\$6	\$4	\$2	\$10	\$5	\$5
Small Mass Set (≤ 10 lbs through ≥ 0.001 lbs, ≤ 5 kg through ≥ 20 mg)	\$35	\$35		\$45	\$45	\$5
Precision Mass ($1,000$ lbs through 0.001 lbs, 30 kg through 1 mg) ASTM 2, 3, 4, 5	\$20	\$20		\$30	\$30	\$40
Precision Mass Echelon I (30 kg through 1 mg) ASTM I or ASTM 0	\$40	\$40		\$60	\$60	
Extra Large Headhouse Weights ($3,000$ lbs through $> 1,250$ lbs)	\$40	\$40		\$50	\$50	\$5
Weight Carts ($6,000$ lbs through $2,000$ lbs)	\$80	\$80		\$100	\$100	\$25
Weight Carts ($8,000$ lbs)	\$200	\$200		\$220	\$220	\$25
Large Volume (100 gal or less)	\$85	\$85		\$100	\$100	\$25
Large Volume (greater than 100 gal and less than or equal to 200 gal)	\$185	\$185		\$200	\$200	\$25
Large Volume (greater than 200 gal and less than or equal to 500 gal)	\$285	\$285		\$300	\$300	\$25
Large Volume (greater than 500 gal)	\$485	\$485		\$500	\$500	\$25
Small Volume (5 gal)	\$50	\$50		\$70	\$70	\$10
Gravimetric Volume (5 gal)	\$180	\$180		\$200	\$200	
Thermometry (-35°C through 150°C) (Based on a per point calibration)	\$90	\$75		\$110	\$90	

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

3 Category.....	Rate
4 Large Mass ($\leq 1,250$ lbs through ≥ 100 lbs, 500 kg through $50 \geq$ kg)...	\$20
5 Medium Mass (< 100 lbs through ≥ 20 lbs, < 50 kg through ≥ 10 kg)	
6	\$30
7 Small Mass (< 20 lbs through ≥ 0.001 lbs, < 10 kg through 1 mg)...	\$20
8 Small Mass Set (≤ 10 lbs through ≥ 0.001 lbs, ≤ 5 kg through ≥ 1 mg)	
9	\$20
10 Precision Mass (1,000 lbs through 0.001 lbs, 30 kg through 1 mg)...	\$10
11 Precision Mass Set (1,000 lbs through 0.001 lbs, 30 kg through 1 mg)	
12	\$20
13 Extra Large Headhouse Weights (3,000 lbs through $> 1,250$ lbs)....	\$40
14 Weight Carts (8,000 lbs through 2,000 lbs).....	\$100
15 Large Volume (1,000 gal through 20 gal).....	\$100
16 Large Volume LPG (1,000 gal through 20 gal).....	\$100
17 Small Volume (5 gal).....	\$20
18 Gravimetric Volume (5 gal).....	\$20
19 Thermometry (-35°C through 150°C)(Based on a 2 point calibration)	
20	\$20

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

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

29 (5) The secretary may fix the manner in which any charges made
 30 pursuant to this subsection are collected.

31 (c) The secretary shall remit all moneys received under subsection (b)
 32 to the state treasurer in accordance with the provisions of K.S.A. 75-4215,
 33 and amendments thereto. Upon receipt of each such remittance, the state
 34 treasurer shall deposit the entire amount in the state treasury to the credit
 35 of the weights and measures fee fund which is hereby created. All
 36 expenditures from the weights and measures fee fund shall be made in
 37 accordance with appropriation acts upon warrants of the director of
 38 accounts and reports issued pursuant to vouchers approved by the
 39 secretary or by a person designated by the secretary.

40 (d) Except as provided in K.S.A. 83-301 through 83-311, and
 41 amendments thereto, nothing in article 2 of chapter 83 of the Kansas
 42 Statutes Annotated, and amendments thereto, shall prohibit the owner of a
 43 weighing or measuring device or the owner's employee or agent from

1 servicing or repairing such device. However, if such device is found out of
2 tolerance and is rejected by the department of agriculture, the owner is
3 responsible for repairing the device within the time specified on the
4 rejection tag and notifying the department when the device is repaired and
5 in operation. The owner shall pay a fee commensurate with the expense
6 incurred by the secretary in performing the follow-up inspections or tests.

7 Sec. 2. K.S.A. 2015 Supp. 83-219 is hereby amended to read as
8 follows: 83-219. (a) It shall be unlawful for any person:

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

14 (2) to use ~~or possess~~ a weight, measure or weighing or measuring
15 device ~~that is used for or intended to be used~~ for commercial purposes
16 which does not meet the tolerance and specifications required by chapter
17 83 of the Kansas Statutes Annotated, and amendments thereto, or that does
18 not conform to the standard authorized by the secretary for determining the
19 quantity of any commodity or article of merchandise, for the purpose of:

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

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

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

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

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

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

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

43 (7) to use in retail trade, except in preparation of packages of

1 merchandise put up in advance of sale, a weighing or measuring device
2 that is not so positioned that its indications may be accurately read and the
3 weighing or measuring operation observed from a reasonable customer
4 position;

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

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

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

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

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

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

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

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

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

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

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

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

1 adopted thereunder;

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

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

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

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

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

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

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

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

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

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

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

41 (4) fail to follow the standards and requirements set forth in K.S.A.
42 83-202, and amendments thereto, or any rules and regulations adopted
43 thereunder;

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

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

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

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

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

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

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

30 Sec. 3. K.S.A. 2015 Supp. 83-302 is hereby amended to read as
31 follows: 83-302. (a) (1) Each person, other than an authorized
32 representative of the secretary or an authorized representative of a city or
33 county department of public inspection of weights and measures
34 established pursuant to K.S.A. 83-210, and amendments thereto, desiring
35 to operate and perform testing and other services as a company in Kansas
36 shall apply to the secretary for a service company license, on a form to be
37 supplied by the secretary, and shall obtain such license from the secretary
38 before operating and performing testing or other services as a service
39 company. Each service company shall obtain a license for each place of
40 business maintained in Kansas and shall pay a license application fee of
41 \$50, ~~or commencing July 1, 2002, and ending June 30, 2010, a fee of \$100~~
42 ~~and thereafter an annual license renewal application fee of \$50, or~~
43 ~~commencing July 1, 2002, and ending June 30, 2010, a fee of \$100 for~~

1 ~~each place of business.~~

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

5 (A) *Commencing July 1, 2017, the license application fee shall be*
 6 *\$100.*

7 (B) *Commencing July 1, 2019, the license application fee shall be*
 8 *\$110.*

9 (C) *Commencing July 1, 2021, the license application fee shall be*
 10 *\$120.*

11 (D) *Commencing July 1, 2023, and thereafter, the license application*
 12 *fee shall be \$130.*

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

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

34 (c) (1) Each technical representative shall be licensed annually by the
 35 secretary. *Except as provided in paragraph (2), each technical*
 36 *representative shall be required to attend continuing education seminars on*
 37 *an annual basis as required by rules and regulations adopted by the*
 38 *secretary and to pass a reasonable examination prescribed by the secretary*
 39 *each year prior to being licensed.* ~~The Kansas department of agriculture~~
 40 ~~shall be authorized to charge a fee to the attendees of the continuing~~
 41 ~~education seminars sponsored by the agency. The amount charged shall be~~
 42 ~~no more than is necessary to cover the expenses incurred in providing the~~
 43 ~~seminar.~~ Each technical representative's license shall expire on June 30

1 following the issuance of the license and shall be void unless renewed
2 prior to the expiration.

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

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

20 (d) No service company license may be issued or renewed under this
21 section until the applicant's weights or measures, or both have been tested
22 for accuracy and sealed by the secretary. The secretary is authorized to
23 accept a certification of the accuracy of the applicant's weights or
24 measures issued by the national institute of standards and technology or by
25 a weights and measures laboratory certified by the national institute of
26 standards and technology in lieu of a test by the secretary, if such
27 certificate shows that the weights or measures have been tested within the
28 last 365 days preceding the license application.

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

34 Sec. 4. K.S.A. 2015 Supp. 83-214, 83-219 and 83-302 are hereby
35 repealed.

36 Sec. 5. This act shall take effect and be in force from and after its
37 publication in the statute book.