

CHAPTER 195

AGRICULTURE

SENATE BILL 95-005

BY SENATORS Schroeder, Martinez, and Mutzebaugh;
also REPRESENTATIVES Knox, Agler, and George.

AN ACT

~~CONCERNING THE REVISION OF THE METROLOGY STANDARDS ACT OF 1983".~~

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 35-14-102 (16), (22), and (31), Colorado Revised Statutes, 1984 Repl. Vol., are amended, and the said 35-14-102, as amended, is further amended, BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

35-14-102. Definitions. As used in this article, unless the context otherwise requires:

(1.7) "CERTIFICATE OF CONFORMANCE" MEANS A DOCUMENT ISSUED BY THE NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY BASED ON TESTING IN PARTICIPATING LABORATORIES, SAID DOCUMENT CONSTITUTING EVIDENCE OF CONFORMANCE OF A TYPE WITH THE REQUIREMENTS OF NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY HANDBOOKS 44, 105-1, 105-2, OR 105-3.

(16) "Metrology services" means all testing, calibrating, and opening of weights and, when necessary, the making of adjustments to weights and measures in order to meet tolerances prescribed by the ~~national bureau of standards~~ NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.

(20.5) "NATIONAL TYPE EVALUATION PROGRAM" MEANS A PROGRAM OF COOPERATION BETWEEN THE NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY, THE NATIONAL CONFERENCE ON WEIGHTS AND MEASURES, THE STATE

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

OF COLORADO, AND THE PRIVATE SECTOR FOR THE PURPOSE OF DETERMINING, ON A UNIFORM BASIS, CONFORMANCE OF A TYPE WITH THE RELEVANT PROVISIONS OF THE FOLLOWING NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY HANDBOOKS:

(a) HANDBOOK 44, "SPECIFICATIONS, TOLERANCES, AND OTHER TECHNICAL REQUIREMENTS FOR WEIGHING AND MEASURING DEVICES";

(b) HANDBOOK 105-1, "SPECIFICATIONS AND TOLERANCES FOR REFERENCE STANDARDS AND FIELD STANDARD WEIGHTS AND MEASURES, SPECIFICATIONS AND TOLERANCES FOR FIELD STANDARD WEIGHTS (NIST CLASS F)";

(c) HANDBOOK 105-2, "SPECIFICATIONS AND TOLERANCES FOR REFERENCE STANDARDS AND FIELD STANDARD MEASURING FLASKS"; OR

(d) HANDBOOK 105-3, "SPECIFICATIONS AND TOLERANCES FOR REFERENCE STANDARDS AND FIELD STANDARD WEIGHTS AND MEASURES, SPECIFICATIONS AND TOLERANCES FOR GRADUATED NECK TYPE VOLUMETRIC FIELD STANDARDS".

(22) "Not susceptible of repair" means any weight or measure which is designed or constructed in such a fashion so as to fail to comply with the applicable design or construction standards for such weight or measure as promulgated by the ~~national bureau of standards~~ NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY or which cannot be repaired to meet the tolerance standards for such weight or measure as promulgated by the national bureau of standards.

(23.5) "PARTICIPATING LABORATORY" MEANS ANY STATE MEASUREMENT LABORATORY THAT HAS BEEN CERTIFIED BY THE NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY, IN ACCORDANCE WITH ITS PROGRAM FOR THE CERTIFICATION OF CAPABILITY OF MEASUREMENT LABORATORIES, TO CONDUCT A TYPE EVALUATION UNDER THE NATIONAL TYPE EVALUATION PROGRAM.

(31) "Traceable" means the system of determining the value of a standard by comparison with approved standards of the ~~national bureau of standards~~ NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.

(31.5) "TYPE" MEANS A MODEL OR MODELS OF A PARTICULAR MEASUREMENT SYSTEM, INSTRUMENT, ELEMENT, OR FIELD STANDARD THAT POSITIVELY IDENTIFIES THE DESIGN. A SPECIFIC TYPE MAY VARY IN ITS MEASUREMENT RANGES, SIZE, PERFORMANCE, AND OPERATING CHARACTERISTICS AS SPECIFIED IN THE CERTIFICATE OF CONFORMANCE.

(31.6) "TYPE EVALUATION" MEANS THE TESTING, EXAMINATION, OR EVALUATION OF A TYPE BY A PARTICIPATING LABORATORY UNDER THE NATIONAL TYPE EVALUATION PROGRAM.

SECTION 2. 35-14-103, Colorado Revised Statutes, 1984 Repl. Vol., is amended to read:

35-14-103. Systems of weights and measures - customary or metric. The inch pound system and the metric system of weights and measures are jointly valid, and either one or both of these systems shall be used for all commercial purposes in this

state. The definitions of basic units of weights and measures, the tables of weights and measures, and the equivalents of weights and measures, as published by the ~~national bureau of standards~~ NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY, are recognized and shall govern weighing and measuring equipment and transactions in this state.

SECTION 3. 35-14-104, Colorado Revised Statutes, 1984 Repl. Vol., is amended to read:

35-14-104. Physical standards. Weights and measures that are traceable to the United States prototype standards supplied by the federal government, or approved as being satisfactory by the ~~national bureau of standards~~ NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY, shall be the state's primary standards of weights and measures and shall be maintained in such calibration as prescribed by the ~~national bureau of standards~~ NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY. All secondary standards may be prescribed by the commissioner and shall be verified upon their initial receipt and as often thereafter as deemed necessary by the commissioner. The commissioner shall have the custody of the state standards of weights and measures and of the other standards and equipment provided for by this article, and he shall keep accurate records of the same.

SECTION 4. 35-14-105, Colorado Revised Statutes, 1984 Repl. Vol., is amended to read:

35-14-105. Technical requirements for weighing and measuring devices - certificate required. The specifications, tolerances, and other technical requirements for commercial, law enforcement, data gathering, and other weighing and measuring devices as adopted by the national conference on weights and measures and published in the ~~national bureau of standards~~ NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Commercial Weighing and Measuring Devices", and supplements thereto or revisions thereof, shall apply to weighing and measuring devices in this state, except as modified or rejected by this article or any rule or regulation promulgated pursuant to this article. THE COMMISSIONER SHALL REQUIRE ANY WEIGHT OR MEASURE OR ANY WEIGHING OR MEASURING INSTRUMENT OR DEVICE TO BE ISSUED A CERTIFICATE OF CONFORMANCE FROM THE NATIONAL TYPE EVALUATION PROGRAM PRIOR TO USE FOR COMMERCIAL OR LAW ENFORCEMENT PURPOSES.

SECTION 5. 35-14-107 (1) (a) and (1) (l), Colorado Revised Statutes, 1984 Repl. Vol., are amended to read:

35-14-107. Powers and duties of the commissioner. (1) The commissioner shall:

(a) Maintain traceability of this state's standards to the ~~national bureau of standards~~ NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY;

(l) Weigh, measure, or inspect packaged commodities kept, offered, or exposed for sale, sold, or in the process of delivery to determine whether they contain the amounts represented and whether they are kept, offered, or exposed for sale in accordance with this article and the rules and regulations promulgated pursuant thereto. Accuracy of

weight, measure, or count shall be determined by procedures set forth in the ~~national bureau of standards~~ NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY handbook 133 as adopted by the national conference on weights and measures 1980, and any supplements or revisions thereto. When the nature of the packaged commodity requires assistance in testing, the commissioner may request the person in possession of the package to furnish equipment and assistance to complete the test.

SECTION 6. 35-14-114 (2) (a), Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended to read:

35-14-114. Method of sale - special nonfood products - repeal. (2) (a) In addition to other methods of measurement, motor fuels may be sold by gallon equivalents pursuant to the requirements of section 8-20-232.5, C.R.S., notwithstanding the provisions of any ~~national bureau of standards~~ NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY handbook or other national standard that is adopted by this state.

SECTION 7. 35-14-121 (1) and (7), Colorado Revised Statutes, 1984 Repl. Vol., are amended to read:

35-14-121. Weigher - qualification - certification - revocation. (1) ~~A citizen of the United States or a person who has declared his intention of becoming such a citizen, who is a resident of this state and of good moral character;~~ A PERSON WHO HAS SUFFICIENTLY GOOD MORAL CHARACTER TO CARRY ON THE BUSINESS STATED IN THE APPLICATION, SUBJECT TO SECTION 24-5-101, C.R.S., who has the ability to weigh accurately, ~~and to make correct weight certificates,~~ and who has received from the commissioner a certificate of certified weigher may use the title of and shall be authorized to act as a certified weigher.

(7) The commissioner, in accordance with section 24-4-104, C.R.S., may suspend, ~~or DENY,~~ revoke, RESTRICT, PLACE ON PROBATION, OR REFUSE TO RENEW THE CERTIFICATE OF any certified weigher OR APPLICANT FOR SUCH CERTIFICATE if ~~he~~ SUCH CERTIFIED WEIGHER OR APPLICANT has been convicted in any court of competent jurisdiction of violating any provision of this article or if the commissioner is satisfied that the ~~weigher~~ PERSON has violated any provision of this article.

SECTION 8. 35-14-123 (1), the introductory portion to 35-14-123 (2), and 35-14-123 (3), (5), (6), (7), (9), and (10), Colorado Revised Statutes, 1984 Repl. Vol., as amended, are amended to read:

35-14-123. Weighing and measuring device sales and repair - certification of service persons. (1) Except as provided in subsection (11) of this section, before ~~selling or offering for sale any new device or~~ installing or performing any repairs or services on any weighing or measuring device which is required to be licensed in this state, a person shall make written application to the commissioner for a ~~license~~ CERTIFICATION upon forms provided by the department. For the purposes of this section, only one ~~license~~ CERTIFICATE is required for each business employing ~~salesmen or servicemen:~~ SERVICE PERSONS.

(2) ~~Scale servicemen's licenses~~ CERTIFICATES FOR SCALE SERVICE PERSONS shall be issued in the following classes:

(3) If ten percent or more of the devices installed or repaired in any one calendar year by a ~~serviceman~~ SERVICE PERSON are rejected, such ~~serviceman~~ PERSON shall be ordered to appear before the commissioner in accordance with the provisions of section 24-4-104, C.R.S., to show cause why ~~his serviceman's license~~ THE PERSON'S CERTIFICATE should not be revoked.

(5) (a) No scale ~~serviceman~~ SERVICE PERSON shall ~~have in his possession~~ POSSESS any test weights other than those weights meeting the requirements of the ~~national bureau of standards~~ NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY handbook 105-1: "Field Standard Weights", and any supplements or additions thereto. Weights employed in the testing, servicing, or repairing of a scale shall conform to the tolerances prescribed for such weights as set forth in said handbook 105-1, and any supplements or additions thereto, and scale ~~servicemen~~ SERVICE PERSONS shall maintain their testing equipment within such tolerances at all times.

(b) All repairs and adjustments made by weighing or measuring device ~~servicemen~~ SERVICE PERSONS shall conform to the technical requirements for weighing and measuring devices adopted in ACCORDANCE WITH section 35-14-105.

(6) Each ~~serviceman~~ SERVICE PERSON shall annually submit ~~his~~ weights and standards to the laboratory for certification; EXCEPT THAT, if such weights or standards are annually certified in another state by that state's metrology laboratory and evidence is shown of current certification, traceable to standards of the ~~national bureau of standards~~, NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY, which is less than a year from date of issuance, the ~~serviceman~~ SERVICE PERSON shall be exempt from obtaining ~~the annual~~ A Colorado certificate for ~~his weights and standards~~ THE CURRENT YEAR.

(7) Upon the completion of an installation or the repair of any device, the ~~serviceman~~ SERVICE PERSON shall submit a placing-in-service report to the commissioner within ten days ~~of~~ AFTER such completion date. The report shall include a scale status report for scale capacities of five thousand pounds or more. Any weighing or measuring device tagged for repairs by the commissioner shall be repaired by the ~~serviceman~~ SERVICE PERSON within thirty days after receiving notification from the owner of the device.

(9) ~~Salesmen who install devices shall only install them in the proper position; level the device, and adjust the zero balance.~~

(10) ~~Licenses for servicemen and persons who sell weighing and measuring devices in existence on June 30, 1983, shall expire December 31, 1988. All licenses AND CERTIFICATES issued on or after July 1, 1983, shall expire five years after issuance. Renewal application shall be in such form as the commissioner shall prescribe. Persons licensed OR CERTIFIED as servicemen SERVICE PERSONS shall also have authority to sell weighing and measuring devices. without obtaining a separate license therefor.~~

SECTION 9. Article 14 of title 35, Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

35-14-124.5. Disciplinary powers. (1) THE COMMISSIONER MAY DENY AN

APPLICATION FOR, REFUSE TO RENEW, REVOKE, OR SUSPEND A LICENSE OR CERTIFICATE OR PLACE A LICENSEE OR CERTIFICATE HOLDER ON PROBATION, IF SUCH PERSON HAS:

(a) VIOLATED ANY PROVISION OF THIS ARTICLE OR OF ANY RULE ADOPTED BY THE COMMISSIONER UNDER THIS ARTICLE;

(b) BEEN CONVICTED OF A FELONY UNDER ANY STATE OR FEDERAL LAW; EXCEPT THAT, IN CONSIDERING A CONVICTION OF A FELONY, THE COMMISSIONER SHALL BE GOVERNED BY SECTION 24-5-101, C.R.S.;

(c) COMMITTED FRAUD OR DECEPTION IN THE PROCUREMENT OR ATTEMPTED PROCUREMENT OF A LICENSE OR CERTIFICATE;

(d) FAILED TO COMPLY WITH A LAWFUL ORDER OF THE COMMISSIONER CONCERNING THE ADMINISTRATION OF THIS ARTICLE;

(e) BEEN CONVICTED OF DECEPTIVE TRADE PRACTICES UNDER ANY STATE OR FEDERAL LAW;

(f) USED A COMMERCIAL MEASURING DEVICE OR MOISTURE-TESTING DEVICE IN DECEPTIVE TRADE PRACTICES IN VIOLATION OF ANY STATE OR FEDERAL LAW.

(2) ALL PROCEEDINGS CONCERNING THE DENIAL, REFUSAL TO RENEW, REVOCATION, OR SUSPENSION OF A LICENSE OR CERTIFICATE OR THE PLACING OF A LICENSEE OR CERTIFICATE HOLDER ON PROBATION SHALL BE CONDUCTED PURSUANT TO ARTICLE 4 OF TITLE 24, C.R.S.

(3) ANY PREVIOUS VIOLATION OF THIS ARTICLE BY AN APPLICANT OR ASSOCIATE OF THE APPLICANT SHALL BE SUFFICIENT GROUNDS FOR DENIAL OF A LICENSE. FOR PURPOSES OF THIS SUBSECTION (3), "ASSOCIATE" MEANS:

(a) A PERSON ASSOCIATED WITH THE APPLICANT IN THE BUSINESS FOR WHICH SUCH APPLICANT SEEKS TO BE LICENSED OR CERTIFIED;

(b) A PARTNER, OFFICER, DIRECTOR, OR STOCKHOLDER OF MORE THAN THIRTY PERCENT OF THE OUTSTANDING SHARES OF A PARTNERSHIP OR CORPORATION, WHEN SUCH PARTNERSHIP OR CORPORATION IS THE APPLICANT.

SECTION 10. 35-14-128 (1), Colorado Revised Statutes, 1984 Repl. Vol., is amended to read:

35-14-128. Laboratory approval - service - condemnation. (1) Weights and measures will not be approved by the department's laboratory unless the design and construction of the unit complies with the design and construction requirements prescribed by the ~~national bureau of standards~~ NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY set forth in handbook 105-1: "Field Standard Weights"; handbook 105-2: "Field Measuring Flasks"; handbook 105-3: "Metal Volumetric Field Standards"; and circular 547: "Precision Laboratory Weights"; and any supplements or revisions to such handbooks or circular.

SECTION 11. 35-14-129 (2), (3), (4), (5), and (6), Colorado Revised Statutes, 1984 Repl. Vol., are repealed as follows:

35-14-129. Moisture-testing devices - specifications. (2) ~~When a moisture-testing device requires a thermometer, the thermometer shall be a laboratory-type thermometer with a minimum graduation of one degree Fahrenheit, with an accuracy of plus or minus two degrees Fahrenheit, or one degree centigrade with an accuracy of plus or minus one degree centigrade.~~

(3) ~~When a moisture-testing device requires a scale or balance external to the device to determine moisture content, the scale or balance and weights must meet the requirements for weighing and measuring devices adopted in section 35-14-105.~~

(4) ~~Any installer, serviceman, or salesman who installs, services, repairs, or sells a moisture-measuring device shall cause a placing-in-service report to be filed with the department. This report shall indicate the date of placing in service, the name and address of the owner, the manufacturer, and the model and serial number of the device within ten days of the in-service date. All installers, servicemen, and salesmen of moisture-testing devices shall meet the requirements of section 35-14-123.~~

(5) ~~Every moisture-testing device that is in commercial use shall be tested for accuracy by the department at least once each year. An official grain sample shall be used for all tests of moisture-measuring devices. A grain sample taken from a lot of grain for moisture content determination shall be taken in a manner recognized by the United States department of agriculture. The tolerance of the moisture-testing device shall be plus or minus five hundredths times the moisture content of the official grain sample.~~

(6) ~~All specifications and tolerances pertaining to moisture-measuring devices specified in this section shall be in effect until such time as specifications and tolerances for moisture-testing devices are included among the technical requirements adopted in section 35-14-105.~~

SECTION 12. 35-14-131 (1), (2) (b), (2) (d), (2) (e), (2) (f), (2) (j), (2) (l), (2) (m), and (3), Colorado Revised Statutes, 1984 Repl. Vol., are amended to read:

35-14-131. Civil penalties. (1) Any person who, ~~by himself, by his~~ ACTING ALONE, THROUGH A servant or agent, or as the servant or agent of another person commits any of the acts enumerated in subsection (2) of this section shall be subject to a civil penalty of not more than seven hundred fifty dollars for each day of violation.

(2) It is a violation for any person to:

(b) Use, or ~~have in his possession~~ POSSESS for current use or for hire, in the buying or selling of any commodity or thing, in the computation of any basic charge or payment for services rendered on the basis of weight or measurement, or in the determination of weight or measurement when a charge is made for such determination, any weight or measure which has not been sealed by the commissioner or ~~his~~ THE COMMISSIONER'S designated agent within the last year, unless specific written permission to use such weight or measure has been received from the

commissioner;

(d) Remove, break, or deface, contrary to law or regulation, any tag, seal, or mark placed on any weight or measure pursuant to the requirements of this article, except in the case of the commissioner or a ~~serviceman, licensed~~ SERVICE PERSON, CERTIFIED pursuant to section 35-14-123, performing ~~his~~ duties as provided FOR in this article or any rule ~~or regulation~~ adopted pursuant thereto;

(e) Sell, or offer or expose for sale, less than the quantity ~~he~~ SUCH PERSON represents of any commodity, thing, or service;

(f) Take more than the quantity ~~he~~ SUCH PERSON represents of any commodity, thing, or service when, as a buyer, ~~he~~ SUCH PERSON furnishes the weight or measure by means of which the amount of the commodity, thing, or service is determined;

(j) Act as or represent ~~himself~~ ONESELF to be a certified weigher without being certified therefor, or for any certified weigher to: Falsely certify the weight of any load, or part of any load, or of any article whatsoever; falsely certify any net or gross weight required by this article to be in said certificate; refuse to weigh any article or thing which it is ~~his~~ SUCH PERSON'S duty to weigh; or refuse to state in any weight certificate anything required to be therein;

(l) Hinder or obstruct in any way the commissioner or ~~his~~ THE COMMISSIONER'S authorized agent in the performance of the commissioner's official duties under this article;

(m) Act as or represent ~~himself~~ ONESELF to be a ~~licensed~~ CERTIFIED weighing or measuring device ~~serviceman~~ SERVICE PERSON without being so ~~licensed~~ CERTIFIED.

(3) Any civil penalty collected under this section shall be transmitted to the state treasurer, who shall credit the same to the general fund. Penalties shall be determined by the commissioner or ~~his~~ THE COMMISSIONER'S designee and may be collected by the department by action instituted in a court of competent jurisdiction for collection of such penalty. In determining the amount of any civil penalty to be assessed, the commissioner shall consider any relevant factors. The final decision of the commissioner or ~~his~~ THE COMMISSIONER'S designee shall be subject to judicial review. In the event that such an action is instituted for the collection of such penalty, the court may consider the appropriateness of the amount of the penalty, if such issue is raised by the party against whom the penalty was assessed.

SECTION 13. 35-14-134, Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended to read:

35-14-134. Repeal of sections - review of functions. Sections 35-14-102 (3), 35-14-121 to ~~35-14-124~~ 35-14-124.5, 35-14-127, 35-14-129, 35-14-131 (1) (d), (1) (j), and (1) (m) are repealed, effective ~~July 1, 1995~~. JULY 1, 2010. Prior to such repeal, the licensing AND CERTIFICATION functions of the department shall be reviewed as provided for in section 24-34-104, C.R.S.

SECTION 14. 24-34-104 (24.1) (d), Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended, and the said 24-34-104 is further amended BY THE

ADDITION OF A NEW SUBSECTION, to read:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (24.1) The following functions of the specified agencies shall terminate on July 1, 1995:

(d) ~~The issuance of licenses related to measurement standards through the department of agriculture in accordance with article 14 of title 35, C.R.S.;~~

(41) THE FOLLOWING AGENCIES, FUNCTIONS, OR BOTH, SHALL TERMINATE ON JULY 1, 2010:

(a) THE FOLLOWING FUNCTIONS OF THE COMMISSIONER OF AGRICULTURE:

(I) THE ISSUANCE OF LICENSES AND CERTIFICATES RELATED TO MEASUREMENT STANDARDS IN ACCORDANCE WITH ARTICLE 14 OF TITLE 35, C.R.S.

SECTION 15. Effective date - applicability. This act shall take effect July 1, 1995, and shall apply to acts occurring on or after said date.

SECTION 16. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 25, 1995