

Offered: 3/16/84
Referred: Finance

Original sponsor: Rules/Governor

1 IN THE SENATE

BY THE LABOR AND
COMMERCE COMMITTEE

2

CS FOR SENATE BILL NO. 491 (L&C)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to weights and measures; and provid-
7 ing for an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 45.75.030 is amended to read:

10 Sec. 45.75.030. STATE DIRECTOR AND INSPECTORS OF WEIGHTS AND
11 MEASURES. The commissioner of commerce and economic development is ex
12 officio state director of weights and measures. The commissioner may
13 delegate this authority, and [DIRECTOR] may appoint state inspectors.

14 * Sec. 2. AS 45.75.040 is amended to read:

15 Sec. 45.75.040. GENERAL POWERS AND DUTIES OF COMMISSIONER [DI-
16 RECTOR]. The commissioner [DIRECTOR] is the custodian of the state
17 standards of weight and measure and of the other standards and equip-
18 ment provided for by this chapter, and [THE DIRECTOR] shall keep
19 accurate records of the standards and equipment. The commissioner
20 [DIRECTOR] shall operate motor vehicle weigh stations; establish fees
21 for and issue overweight and oversize vehicle permits; enforce this
22 chapter; implement AS 44.33.020(25); and [HE SHALL] supervise the
23 weights and measures offered for sale, sold, or in use in the state.

24 * Sec. 3. AS 45.75.050(a) is amended to read:

25 (a) The commissioner [DIRECTOR] shall adopt [ISSUE] regulations
26 for the enforcement of this chapter in accordance with the Administra-
27 tive Procedure Act (AS 44.62). These have the effect of law.

28 * Sec. 4. AS 45.75.050(b) is amended to read:

29 (b) The regulations may include

1 (1) standards of net weight, measure, or count, and reason-
2 able standards of fill, for any commodity in package form;

3 (2) rules governing the technical and reporting procedures
4 to be followed, and the report and record forms and marks of approval
5 and rejection to be used by inspectors of weights and measures in the
6 discharge of their official duties;

7 (3) exemptions from the sealing or marking requirements of
8 AS 45.75.120 with respect to weights and measures of a character or
9 size that sealing or marking would be inappropriate, impracticable, or
10 damaging to the apparatus in question; [AND]

11 (4) with respect to classes of weights and measures of a
12 character that annual retesting is unnecessary to continued accuracy,
13 exemptions from the requirements of AS 45.75.070 and 45.75.080 for
14 annual testing, and schedules fixing the frequency of required retests
15 for classes of devices exempted; and

16 (5) provisions governing the enforcement of the size,
17 weight, and load limitations established under AS 19.10.060; the
18 issuance of, and the enforcement of the terms of, permits for over-
19 weight and oversize vehicles; and the operation of weigh stations.

20 * Sec. 5. AS 45.75.050(d) is amended to read:

21 (d) The specifications, tolerances, and regulations for commer-
22 cial weighing and measuring devices, together with amendments to them,
23 as recommended by the National Bureau of Standards and published in
24 National Bureau of Standards Handbook 44 and supplements to it, or in
25 any publication revising or superseding Handbook 44, are the specifi-
26 cations, tolerances, and regulations for commercial weighing and
27 measuring devices of the state, except as specifically modified,
28 amended, or rejected by a regulation adopted [ISSUED] by the commis-
29 sioner [DIRECTOR].

1 * Sec. 6. AS 45.75.060 is amended to read:

2 Sec. 45.75.060. OFFICE AND FIELD [WORKING] STANDARDS AND EQUIP-
3 MENT. The commissioner [STATE] shall maintain [SUPPLY THE DIVISION OF
4 WEIGHTS AND MEASURES WITH] a duplicate set of state standards of
5 weight and measure, referred to in this chapter as office standards.
6 The commissioner [STATE] shall also supply field standards and the
7 equipment that [WHICH] is necessary to carry out this chapter. The
8 office standards and field standards shall be verified upon their
9 initial receipt and at least once each year afterward. The office
10 standards shall be verified by direct comparison with the state stan-
11 dards. The field standards shall be verified by comparison with the
12 office standards.

13 * Sec. 7. AS 45.75.070 is amended to read:

14 Sec. 45.75.070. TESTING AND INSPECTION OF LOCAL STANDARDS AND
15 WEIGHTS AND MEASURES AT STATE-SUPPORTED INSTITUTIONS. (a) At least
16 once every five years, the commissioner [DIRECTOR] shall test the
17 standards of weight and measure obtained by a city that [WHICH] has
18 appointed a sealer of weights and measures, and shall approve them if
19 they are correct. The commissioner [DIRECTOR] shall inspect the
20 standards at least once every two years.

21 (b) The commissioner [DIRECTOR] shall from time to time test all
22 weights and measures used in checking the receipt or disbursement of
23 supplies in every institution maintained by money appropriated by the
24 legislature, and shall report the commissioner's [HIS] findings, in
25 writing, to the supervisory board and to the executive officer of the
26 institution concerned.

27 * Sec. 8. AS 45.75.080(a) is amended to read:

28 (a) The commissioner [DIRECTOR] may inspect and test, to ascer-
29 tain if they are correct, all weights and measures kept, offered, or

1 exposed for sale. The commissioner [DIRECTOR] shall, at least annu-
2 ally [SEMIANNUALLY AND MORE OFTEN AS HE CONSIDERS NECESSARY], inspect
3 and test, to ascertain if they are correct, all weights and measures
4 commercially used

5 (1) in determining the weight, measurement, or count of
6 commodities or things sold, or offered or exposed for sale, on the
7 basis of weight or of measure;

8 (2) in computing the basic charge or payment for services
9 rendered on the basis of weight or of measure or count; or

10 (3) in determining weight or measurement when a charge is
11 made for this determination.

12 * Sec. 9. AS 45.75.090 is amended to read:

13 Sec. 45.75.090. INVESTIGATIONS. The commissioner [DIRECTOR]
14 shall investigate complaints of violations of this chapter, and shall
15 [, UPON HIS OWN INITIATIVE,] conduct other [THE] investigations that
16 the commissioner [WHICH HE] considers appropriate and advisable to
17 develop information on prevailing procedures in commercial quantity
18 determination, [AND] on possible violations of this chapter and to
19 promote the general objective of accuracy in the determination and
20 representation of quantity in commercial transactions.

21 * Sec. 10. AS 45.75.100 is amended to read:

22 Sec. 45.75.100. INSPECTION OF PACKAGES. (a) The commissioner
23 [DIRECTOR] shall, from time to time, weigh or measure and inspect
24 packages or amounts of commodities kept, offered, or exposed for sale
25 to determine whether they contain the amounts represented and whether
26 they are kept, offered, or exposed for sale in accordance with law.
27 When packages or amounts of commodities do not contain the amounts
28 represented, or are kept, offered, or exposed for sale in violation of
29 law, the commissioner [DIRECTOR] may order them off sale and may mark

1 or tag them to show they are illegal. The commissioner [DIRECTOR] may
2 use recognized sampling procedures. Compliance of a given lot of
3 packages shall be determined on the basis of the result obtained on a
4 sample selected from and representative of the lot.

5 (b) A [NO] person may not

6 (1) sell, or keep, offer, or expose for sale in intrastate
7 commerce a package or amount of commodity that has been ordered off
8 sale or marked or tagged as provided in this section until the package
9 or amount of commodity has been brought into full compliance with all
10 legal requirements; or

11 (2) dispose of a package or amount of commodity that is
12 ordered off sale or marked or tagged as provided in this section and
13 that does not meet legal requirements, except with the specific ap-
14 proval of the commissioner [DIRECTOR].

15 * Sec. 11. AS 45.75.110(a) is amended to read:

16 (a) The commissioner [DIRECTOR] may issue stop-use orders,
17 stop-removal orders, and removal orders for weights and measures used
18 or capable of being used commercially. The commissioner [DIRECTOR]
19 may issue stop-removal orders and removal orders for packages or
20 amounts of commodities kept, offered, or exposed for sale whenever the
21 commissioner [HE] considers it necessary or expedient in enforcing
22 this chapter.

23 * Sec. 12. AS 45.75.120 is amended to read:

24 Sec. 45.75.120. DISPOSITION OF CORRECT AND INCORRECT APPARATUS.
25 (a) The commissioner [DIRECTOR] shall approve for use and seal or
26 mark with appropriate devices the weights and measures that the com-
27 missioner [WHICH HE] finds upon inspection and test to be correct as
28 provided in AS 45.75.050, and shall reject and mark or tag as "re-
29 jected" the weights and measures that are found [WHICH HE FINDS], upon

1 inspection or testing [TEST], to be incorrect as provided in AS 45.-
2 75.050 but that [WHICH] in the commissioner's [HIS] best judgment may
3 be satisfactorily repaired [ARE SUSCEPTIBLE OF SATISFACTORY REPAIR].
4 Sealing [THIS SEALING] or marking is not required for weights and
5 measures exempted by regulation [OF THE DIRECTOR].

6 (b) The commissioner [DIRECTOR] shall condemn, and may seize and
7 destroy weights and measures found to be incorrect that [WHICH], in
8 the commissioner's [HIS] best judgment, cannot be satisfactorily
9 repaired [ARE NOT SUSCEPTIBLE OF SATISFACTORY REPAIR]. Weights and
10 measures that [WHICH] are rejected under (a) of this section may be
11 confiscated and destroyed by the commissioner [DIRECTOR] if not cor-
12 rected as required by AS 45.75.180 or if used or disposed of contrary
13 to the requirements of AS 45.75.180.

14 * Sec. 13. AS 45.75.130 is amended to read:

15 Sec. 45.75.130. POLICE POWERS AND RIGHT OF ENTRY AND STOPPAGE.

16 (a) In the enforcement of this chapter and any other law dealing with
17 weights and measures, the commissioner [DIRECTOR] has special police
18 powers. The commissioner [HE] may arrest, without formal warrant, any
19 person violating the law, and seize for use as evidence, without
20 formal warrant, incorrect or unsealed weights and measures or amounts
21 or packages of commodity, used, retained, offered, or exposed for
22 sale, or sold in violation of law. In performing the commissioner's
23 [HIS] duties, the commissioner [DIRECTOR] may enter, without formal
24 warrant, any structure or premises, and stop any person and require
25 the person [HIM] to proceed to a specified place.

26 (b) An employee of the Department of Commerce and Economic
27 Development who is authorized by the commissioner to enforce the size,
28 weight, and load limitations adopted by the Department of Transporta-
29 tion and Public Facilities under AS 19.10.060 may issue a citation to

1 a person who violates (1) any of those limitations, (2) the terms of
2 an overweight or oversize vehicle permit issued under AS 44.33.020(25)
3 and AS 45.75.040, or (3) the provisions of regulations adopted under
4 AS 44.33.020(25) and AS 45.75.050(b)(5). Citations issued under this
5 subsection shall be treated as specified by AS 12.25.180 - 12.25.230
6 for citations issued by a peace officer.

7 * Sec. 14. AS 45.75.140 is amended to read:

8 Sec. 45.75.140. POWERS AND DUTIES OF INSPECTORS [DEPUTY DIRECTOR
9 AND INSPECTOR]. The powers and duties of the commissioner [DIRECTOR]
10 specified in AS 45.75.070, 45.75.080, 45.75.090, 45.75.100, 45.75.120,
11 45.75.130, and 45.75.170 may [, AND 45.75.380 SHALL] also be exercised
12 by [THE DEPUTY DIRECTOR AND] inspectors, when acting under the in-
13 structions and at the direction of the commissioner [DIRECTOR].

14 * Sec. 15. AS 45.75.150 is amended to read:

15 Sec. 45.75.150. APPOINTMENT OF CITY SEALERS AND DEPUTY SEALERS
16 OF WEIGHTS AND MEASURES. (a) A city may appoint a sealer of weights
17 and measures, and the deputy sealers of weights and measures it needs.
18 If the city appoints a sealer, the city [IT] shall obtain at its
19 expense the standards of weight and measure [WEIGHTS AND MEASURES] and
20 the additional equipment, for use in the enforcement of this chapter
21 in the city, that [WHICH] the commissioner [DIRECTOR] prescribes.

22 (b) When the standards of weight and measure provided by a city
23 are examined and approved by the commissioner [DIRECTOR], they are the
24 official standards for the city. At least every five years, the
25 sealer shall make or arrange to have made comparisons between the
26 sealer's [HIS] field standards and appropriate standards of a higher
27 order belonging to the sealer's [HIS] city or to the state, in order
28 to maintain the field standards in accurate condition.

29 * Sec. 16. AS 45.75.160 is amended to read:

1 Sec. 45.75.160. CITY SEALERS AND DEPUTY SEALERS. The sealer of
2 a city, and the sealer's [HIS] deputy [SEALER] when acting under the
3 sealer's [HIS] instructions and [AT HIS] direction, have the same
4 powers and shall perform the same duties within the city as those
5 granted to [AND IMPOSED UPON] the commissioner [DIRECTOR] by
6 AS 45.75.080 - 45.75.130 and 45.75.380.

7 * Sec. 17. AS 45.75.170 is amended to read:

8 Sec. 45.75.170. CONCURRENT JURISDICTION. In each city having a
9 sealer of weights and measures, the commissioner [DIRECTOR] has con-
10 current authority to enforce this chapter.

11 * Sec. 18. AS 45.75.180 is amended to read:

12 Sec. 45.75.180. DUTY OF OWNERS OF INCORRECT APPARATUS. Weights
13 and measures rejected by the commissioner [DIRECTOR] or a sealer
14 remain subject to the control of the rejecting authority until suit-
15 able repair or disposition of them is made as required by this sec-
16 tion. The owner of a rejected weight and measure shall correct it
17 within 30 days or a longer period authorized by the rejecting author-
18 ity, [;] or [,] may dispose of it in the manner authorized by the
19 rejecting authority. Rejected weights and measures may not again be
20 used commercially until officially reexamined [RE-EXAMINED] and found
21 to be correct or until specific written permission for their use is
22 issued by the rejecting authority.

23 * Sec. 19. AS 45.75.190(c) is amended to read:

24 (c) The commissioner [DIRECTOR] may adopt [ISSUE] reasonable
25 regulations necessary to assure that amounts of commodity sold are
26 determined in accordance with good commercial practice and are so
27 determined and represented as to be accurate and informative.

28 * Sec. 20. AS 45.75.200(c) is amended to read:

29 (c) Under (a)(1) of this section the commissioner [DIRECTOR]

1 shall, by regulation, establish

2 (1) reasonable variations or tolerances to be allowed, that
3 [WHICH] may include variations below the declared weight or measure
4 caused by ordinary and customary exposure, only after the commodity is
5 introduced into intrastate commerce, to conditions that normally occur
6 in good distribution practice and that unavoidably result in decreased
7 weight or measure,

8 (2) exemptions [EXEMPTION] as to small packages, and

9 (3) exemptions as to commodities put up in variable weights
10 or sizes for sale to the consumer intact and either customarily not
11 sold as individual units or customarily weighed or measured at the
12 time of sale to the consumer.

13 * Sec. 21. AS 45.75.220 is amended to read:

14 Sec. 45.75.220. MISLEADING PACKAGES. A [NO] commodity in pack-
15 age form may not be so wrapped, or put in a container so made, formed,
16 or filled as to mislead the purchaser as to the quantity of the con-
17 tents of the package, and the contents of a container may not fall
18 below the reasonable standard of fill that [WHICH] the commissioner
19 [DIRECTOR] prescribes for the commodity.

20 * Sec. 22. AS 45.75.282(b) is amended to read:

21 (b) One of the tickets provided for in (a) of this section shall
22 be retained by the vendor, and the other shall be delivered to the
23 purchaser at the time of delivery of the commodity, or surrendered, on
24 demand, to the commissioner [DIRECTOR, OR THE DEPUTY DIRECTOR,] or an
25 inspector, or a sealer [,] or a deputy sealer, who may [,IF HE WANTS
26 TO] retain it as evidence and, if it is retained, shall issue a weight
27 slip in place of it.

28 * Sec. 23. AS 45.75.290(b) is amended to read:

29 (b) One of the tickets provided for under (a) of this section

1 shall be retained by the vendor and the other shall be delivered to
2 the purchaser at the time of delivery of the fuel, or shall be sur-
3 rendered, on demand, to the commissioner [DIRECTOR, OR THE DEPUTY
4 DIRECTOR] or an inspector, or a sealer or deputy sealer, who may [, IF
5 HE DESIRES TO] retain it as evidence and [, SHALL] issue a weight slip
6 in place of it for delivery to the purchaser. If the purchaser car-
7 ries away the [HIS] purchase, the vendor is required only to give to
8 the purchaser at the time of sale a delivery ticket stating the number
9 of pounds of fuel delivered to the purchaser [HIM].

10 * Sec. 24. AS 45.75.300 is amended to read:

11 Sec. 45.75.300. TEXTILE PRODUCTS. (a) It is unlawful to keep
12 for the purpose of sale, offer or expose for sale, or sell textile
13 yard goods put up or packaged in advance of sale in a bolt or roll, or
14 any other textile product put up or packaged in advance of sale in any
15 other unit, for wholesale or retail sale, unless the bolt or roll, or
16 other unit, is definitely, plainly, and conspicuously marked to show
17 its net measure in terms of yards or its net weight, in terms of
18 avoirdupois pounds or ounces, subject to the following limitations and
19 requirements:

20 (1) a unit of twine or cordage may be marked to show its
21 net measure in terms of feet; readywound bobbins not sold separately
22 are not required to be individually marked, but the package containing
23 the bobbins shall be marked to show the number of bobbins contained in
24 it and the net weight or measure of the thread on each bobbin; a unit
25 of sewing, basting, mending, darning, crocheting, tatting, hand-
26 knitting, or embroidery thread or yarn, except nylon hand-knitting
27 yarn, that is not composed in whole or in part of wool, the net weight
28 of which is less than two ounces avoirdupois, shall be marked to show
29 its net measure in terms of yards as unwound from the ball or from the

1 spool or other holder; a retail unit of a textile product sold only
2 for household use consisting of a package containing two or more
3 similar individual units that are not sold separately shall be marked
4 to show the number of individual units in the package and the net
5 weight or net measure of the product in each individual unit, but this
6 does not apply where the individual units are separately marked; a
7 unit of yarn, composed in whole or in part of wool, sold to consumers
8 for handiwork, shall be marked to show the net weight of the yarn,
9 except that any such unit of tapestry, mending, or embroidery yarn,
10 the net measure of which does not exceed 50 yards, may be marked to
11 show its linear measure only;

12 (2) the marking required by this section shall in all cases
13 be in combination with the name and place of business of the manufac-
14 turer, packer, or distributor of the product, or a trademark, symbol,
15 brand, or other mark that identifies the manufacturer, packer, or
16 distributor;

17 (3) reasonable tolerances shall be permitted, and these
18 shall be included in regulations adopted for the enforcement of this
19 section.

20 (b) This [THAT ARE ISSUED BY THE DIRECTOR; (4) THIS] section
21 does not apply to the following textile products when sold at whole-
22 sale in bulk by net weight: cordage, agricultural bag sewing threads,
23 twines, yarns that are to be processed, and yarns that are to be
24 industrially converted into end-use products.

25 * Sec. 25. AS 45.75.330 is amended to read:

26 Sec. 45.75.330. INJUNCTION. The commissioner [DIRECTOR] may
27 apply to a court for a temporary or permanent injunction restraining a
28 person from violating a provision of this chapter.

29 * Sec. 26. AS 45.75.380 is amended to read:

1 Sec. 45.75.380. OFFENSES AND PENALTIES. It is a class B mis-
2 demeanor for a person to perform any of the following acts [A PERSON
3 WHO, BY HIMSELF OR BY HIS SERVANT, OR AGENT, OR AS THE SERVANT OR
4 AGENT OF ANOTHER, PERFORMS ANY ONE OF THE FOLLOWING ACTS IS GUILTY OF
5 A MISDEMEANOR AND UPON A FIRST CONVICTION OF THE VIOLATION IS
6 PUNISHABLE BY A FINE OF NOT LESS THAN \$20 NOR MORE THAN \$200, OR BY
7 IMPRISONMENT FOR NOT MORE THAN THREE MONTHS, OR BY BOTH. UPON A
8 SECOND OR SUBSEQUENT CONVICTION, THE PERSON IS PUNISHABLE BY A FINE OF
9 NOT LESS THAN \$50 NOR MORE THAN \$500, OR BY IMPRISONMENT FOR NOT MORE
10 THAN ONE YEAR, OR BY BOTH]:

11 (1) uses or has in possession for the purpose of using for
12 any commercial purpose specified in AS 45.75.080, sells, offers, or
13 exposes for sale, or hire, or has in possession for the purpose of
14 selling or hiring, an incorrect weight or measure or a device or
15 instrument used to or calculated to falsify a weight or measure;

16 (2) uses or has in possession for current use, in buying or
17 selling a commodity or thing, or for hire or award, or in the computa-
18 tion of a basic charge or payment for services rendered on the basis
19 of weight or measurement, or in the determination of weight or mea-
20 surement when a charge is made for determination, a weight or measure
21 that has not been tested and sealed by the appropriate authority
22 within one year, (A) unless written notice is given to the appropriate
23 authority to the effect that the weight or measure is available for
24 examination, or is due for reexamination [RE-EXAMINATION], as the case
25 may be, (B) unless specific written permission to use the weight or
26 measure is received from the appropriate authority, or (C) unless the
27 weight or measure is exempt from sealing or annual testing require-
28 ments by AS 45.75.080 or by a regulation adopted [OF THE DIRECTOR
29 ISSUED] under AS 45.75.050;

1 (3) disposes of a rejected [OR CONDEMNED] weight or measure
2 in a manner contrary to law or regulation;

3 (4) removes from a weight or measure, contrary to law or
4 regulation, a tag, seal, or mark placed on it by the appropriate
5 authority;

6 (5) sells or [,] offers [OR EXPOSES] for sale less than the
7 quantity the person [HE] represents of a commodity, thing, or service;

8 (6) takes more than the quantity the person [HE] represents
9 of a commodity, thing, or service when, as buyer, the person [HE]
10 furnished the weight or measure by means of which the amount of the
11 commodity, thing, or service is determined;

12 (7) keeps for the purpose of sale, advertises, or offers
13 [OR EXPOSES] for sale, or sells a commodity, thing, or service in a
14 condition or manner contrary to law or regulation;

15 (8) uses in retail trade, except in the preparation of
16 packages put up in advance of sale and of medical prescriptions, a
17 weight or measure that is not so positioned that its indications may
18 be accurately read and the weighing or measuring operation observed
19 from some position that [WHICH] may reasonably be assumed by a cus-
20 tomer;

21 (9) hinders or obstructs the commissioner, an inspector, a
22 sealer, or a deputy sealer in the performance of official duties under
23 this chapter;

24 (10) violates a provision of an overweight or oversize
25 permit;

26 (11) violates a weight, load, or size limitation established
27 under AS 19.10.060 or regulations adopted under AS 19.05.020 or
28 AS 45.75.050(b)(5);

29 (12) violates a provision of this chapter or of a regulation

1 adopted under this chapter for which a specific penalty is not pre-
2 scribed.

3 * Sec. 27. AS 45.75.380 is amended by adding a new subsection to read:

4 (b) In addition to the penalty provided for in (a) of this
5 section, a fine of five cents a pound shall be imposed for each pound
6 of weight by which a vehicle exceeds an allowable gross weight limita-
7 tion established under AS 19.10.060 or regulations adopted by the
8 Department of Transportation and Public Facilities under AS 19.05.020.

9 * Sec. 28. AS 45.75.390(4) is repealed and reenacted to read:

10 (4) "commissioner" means the commissioner of commerce and
11 economic development or a designee;

12 * Sec. 29. AS 28.35.230(e) and AS 45.75.360 are repealed.

13 * Sec. 30. This Act takes effect immediately in accordance with AS 01.-
14 10.070(c).