

No. 396

AN ACT

SB 1556

Amending the act of December 1, 1965 (P. L. 988), entitled "An act relating to weights and measures; regulating the use and sale, and providing for the inspection of weighing and measuring devices; regulating the sale and packaging of commodities; imposing duties and conferring powers upon the Secretary and Department of Internal Affairs and certain local officials; and prescribing penalties," transferring jurisdiction of administering and enforcing the provisions thereof from the Department of Internal Affairs to the Department of Justice.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. The title, clause (4) of section 2, sections 6, 7, 8, 9, 10, 11 and 12, subsections (a) and (c) of section 13, sections 14, 15 and 16, subsections (a) and (b) of section 18, section 19, subsection (a) of section 20, subsection (c) of section 21, subsection (b) of section 22 and sections 34, 35 and 37, act of December 1, 1965 (P. L. 988), known as the "Weights and Measures Act of 1965," are amended to read:

AN ACT

Relating to weights and measures; regulating the use and sale, and providing for the inspection of weighing and measuring devices; regulating the sale and packaging of commodities; imposing duties and conferring powers upon the ¹ [Secretary] Attorney General and Department of [Internal Affairs] Justice and certain local officials; and prescribing penalties.

Section 2. Definitions.—When used in this act, the following words and phrases shall have the meanings ascribed to them in this section unless the context clearly indicates otherwise:

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(4) ["Secretary." The Secretary of Internal Affairs] "Attorney General." The Attorney General shall include counsel general, attorney general, deputy attorney general, assistant attorney general, special attorney general or an attorney at law, designated by the Attorney General or as provided for in section 16 of this act.

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¹"Secretary" in original.

Section 6. Director and Inspectors of Weights and Measures.—There shall be a director of weights and measures and inspectors of weights and measures and necessary technical and clerical personnel who shall be appointed by the [secretary] Attorney General and who shall collectively comprise the State Bureau of Standard Weights and Measures, of which the director shall be the chief. The [secretary] Attorney General shall be allowed such sums for salaries for the director, the inspectors and the necessary technical and clerical employes, for necessary equipment and supplies and for traveling and contingent expenses, as shall be appropriated by the General Assembly.

Section 7. General Powers and Duties of [Secretary] Attorney General.—The [secretary] Attorney General shall have the custody of the State standards of weight and measure and of the other standards and equipment provided for by this act and shall keep accurate records of the same. The [secretary] Attorney General shall enforce the provisions of this act. He shall have and keep a general supervision over the weights and measures offered for sale, sold or in use in the State.

Section 8. Specific Powers and Duties of [Secretary] Attorney General; Regulations.—(a) The [secretary] Attorney General shall issue from time to time regulations for the enforcement and administration of this act, which regulations upon being filed with the Department of State under the procedures established by the Administrative Agency Law, act of June 4, 1945 (P. L. 1388), and its amendments, shall have the force and effect of law. These regulations may include:

(1) Standards of net weight, measure, count and standards of fill for any commodity in package form.

(2) Rules governing the technical and reporting procedures to be followed and the report and record forms and marks of approval and rejection to be used by inspectors of weights and measures in the discharge of their official duties.

(3) Exemptions from the sealing or marking requirements of section 14 of this act with respect to weights and measures of such character or size that such sealing or marking would be inappropriate, impracticable or damaging to the apparatus in question.

(b) These regulations shall include specifications, tolerances and regulations for weights and measures of the character of those specified in section 10 of this act designed to eliminate from use without prejudice to apparatus that conforms as closely as practicable to the official standards those (i) that are not accurate; (ii) that are of such construction that they are faulty, that is, that are not reasonably permanent in their adjustment or will not

repeat their indications correctly ; or (iii) that facilitate the perpetration of fraud. The specifications, tolerances and regulations for commercial weighing and measuring devices, together with amendments thereto as recommended by the National Bureau of Standards and published in National Bureau of Standards Handbook 44, and supplements thereto, or in any publication revising or superseding Handbook 44, shall be the specifications, tolerances and regulations for commercial weighing and measuring devices of the Commonwealth of Pennsylvania except insofar as specifically modified, amended or rejected by a regulation issued by the [secretary] Attorney General. For the purposes of this act, apparatus shall be deemed to be "correct" when it conforms to all applicable requirements promulgated as specified in this section ; other apparatus shall be deemed to be "incorrect."

(c) Regulations promulgated hereunder shall be effective thirty days from the date of their filing with the Department of State during which period interested parties may submit to the [secretary] Attorney General, in writing, any objections to the proposed regulations and the reasons supporting such objections. In addition, the [secretary] Attorney General shall hold a hearing upon the written request of three or more interested parties made within said thirty day period, in which case the [secretary] Attorney General may, at his discretion, further postpone the effective date of the regulation.

Section 9. Testing and Inspecting of Standards.—The [secretary] Attorney General at least once every five years shall test the standards of weight and measure procured by any city or county for which a sealer of weights and measures has been appointed and shall approve the same when found to be correct ; and he shall inspect such standards at least once every two years.

Section 10. General Testing and Inspecting.—When not otherwise provided by law, the [secretary] Attorney General shall have the power to inspect and test to ascertain if they are correct all weights and measures kept, offered or exposed for sale. It shall be the duty of the [secretary] Attorney General within a twelve-month period, or less frequently if in accordance with a schedule issued by him and as much oftener as he may deem necessary, to inspect and test to ascertain if they are correct, all weights and measures commercially used (i) in determining the weight, measurement or count of commodities or things sold, offered or exposed for sale on the basis of weight, measure or of count ; or (ii) in computing the basic charge or payment for services rendered on the basis of weight, measure or of count. With respect to single-service devices, that is, devices designed to be used commercially

only once and to be then discarded, and with respect to devices uniformly mass-produced, as by means of a mold or die and not susceptible to individual adjustment, tests may be made on representative samples of such devices and the lots of which such samples are representative shall be held to be correct or incorrect upon the basis of the results of the inspections and tests on such samples.

Section 11. Investigations.—The [secretary] Attorney General shall investigate complaints made to him concerning violations of the provisions of this act and shall upon his own initiative conduct such investigations as he deems appropriate and advisable, to develop information on prevailing procedures in commercial quantity determination and on possible violations of the provisions of this act, and to promote the general objective of accuracy in the determination and representation of quantity in commercial transactions.

Section 12. Inspection of Packages.—The [secretary] Attorney General shall, from time to time, weigh or measure and inspect packages or amounts of commodities kept, offered or exposed for sale, sold or in the process of delivery, to determine whether the same contain the amounts represented and whether they be kept, offered or exposed for sale or sold in accordance with law; and when such packages or amounts of commodities are found not to contain the amounts represented or are found to be kept, offered or exposed for sale in violation of law, the [secretary] Attorney General may order them off sale and may so mark or tag them as to show them to be illegal. In carrying out the provisions of this section, the [secretary] Attorney General, whenever possible, shall employ sampling procedures recommended by the National Bureau of Standards, under which the compliance of a given lot of packages will be determined on the basis of the result obtained on a sample selected from and representative of such lot. No person shall (i) sell or keep, offer or expose for sale in intrastate commerce any package or amount of commodity that has been ordered off sale or marked or tagged as provided in this section, unless and until such package or amount of commodity has been brought into full compliance with all legal requirements; or (ii) dispose of any package or amount of commodity that has been ordered off sale or marked or tagged as provided in this section and that has not been brought into compliance with legal requirements in any manner except with the specific approval of the [secretary] Attorney General.

Section 13. Stop-Use, Stop-Removal and Removal Orders.—(a) The [secretary] Attorney General shall have the power to issue stop-use orders, stop-removal orders and removal orders with respect to weights and measures being, or susceptible of being, ¹ com-

¹ "Commercial" in original.

mercially used and to issue stop-removal orders and removal orders with respect to packages or amounts of commodities kept, offered or exposed for sale, sold or in the process of delivery, whenever in the course of his enforcement of the provisions of this act he deems it necessary or expedient to issue such orders.

* * *

(c) Whenever an aggrieved person shall appeal or seek to enjoin enforcement of any order issued by the [secretary] Attorney General pursuant to this section, such proceeding shall be brought in the court of common pleas of the judicial district in which the weight, measure or commodity was located at the time of the issuance of the [secretary's] Attorney General's order.

Section 14. Disposition of Correct and Incorrect Apparatus.—(a) The [secretary] Attorney General shall approve for use and seal or mark with appropriate devices such weights and measures as he finds upon inspection and test to be "correct" as defined in section 8 of this act and shall reject and mark or tag "rejected" such weights and measures as he finds upon inspection or test to be "incorrect" as defined in section 8 of this act, but which in his best judgment are susceptible to satisfactory repair. Such sealing or marking shall not be required with respect to such weights and measures as may be exempted therefrom by a regulation of the [secretary] Attorney General issued under the authority of section 8 of this act.

(b) The [secretary] Attorney General shall condemn and may seize and may destroy weights and measures found to be incorrect that in his best judgment are not susceptible to satisfactory repair. Weights and measures that have been rejected may be confiscated and may be destroyed by the [secretary] Attorney General if not corrected as required by section 20 of this act or if used or disposed of contrary to the requirements of section 20 of this act.

Section 15. Police Powers; Right of Entry and Stoppage.—(a) With respect to the enforcement of this act and any other acts dealing with weights and measures that he is or may be empowered to enforce, the [secretary] Attorney General may seize for use as evidence without formal warrant, incorrect or unsealed weights and measures or amounts or packages of commodity found, prior to seizure, to be used, retained, offered or exposed for sale or sold in violation of law.

(b) In the performance of his official duties, the [secretary] Attorney General is authorized to enter and go into or upon, without formal warrant, any structure or premises and to stop any person whatsoever and to require him to proceed with or without any vehicle of which he may be in charge to the nearest available testing

apparatus tested and approved by the [secretary] Attorney General, a city or a county.

Section 16. Powers and Duties of Director and Inspector.—The powers and duties given to and imposed upon the [secretary] Attorney General by sections 9, 10, 11, 12, 13, 14, 15, 19 and 37 of this act are hereby given to and imposed upon the director and inspectors also when acting under the instructions and at the direction of the [secretary] Attorney General.

Section 18. City and County Standards and Equipment.—(a) The mayor of each city and the board of county commissioners of each county for which a sealer has been appointed shall (i) procure at the expense of the city or county, as the case may be, such standards of weight and measure and such additional equipment to be used for the enforcement of the provisions of this act in such city or county as may be prescribed by the [secretary] Attorney General; (ii) provide a suitable office for the sealer; and (iii) make provisions for the necessary clerical services, supplies and transportation and for defraying contingent expenses incident to the official activities of the sealer in carrying out the provisions of this act.

(b) When the standards of weight and measure required by this section to be provided by a city or county shall have been examined and approved by the [secretary] Attorney General, they shall be the official standards for such city or county.

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Section 19. Concurrent Jurisdiction.—In cities and counties for which sealers of weights and measures have been appointed as provided for by local regulations, the [secretary] Attorney General shall have concurrent authority to enforce the provisions of the act.

Section 20. Duty of Owners of Incorrect Apparatus.—(a) Weights and measures that have been rejected under the authority of the [secretary] Attorney General or of a sealer shall remain subject to the control of the rejecting authority until such time as suitable repair or disposition thereof has been made as requested by this section.

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Section 21. Method of Sale of Commodities.—* * *

(c) The [secretary] Attorney General may issue such reasonable regulations as are necessary to assure that amounts of commodity sold are determined in accordance with good commercial practice and are so determined and represented as to be accurate and informative to all parties at interest.

Section 22. Packages; Declarations of Quantity and Origin; Variations; Exemptions.—* * *

(b) Under clause (2) of subsection (a) of this section, the [secretary] Attorney General shall, by regulation, establish (i) reasonable variations to be allowed which may include variations below the declared weight or measure caused by ordinary and customary exposure only after the commodity is introduced into intrastate commerce to conditions that normally occur in good distribution practice and that unavoidably result in decreased weight or measure; (ii) exemptions as to small packages; and (iii) exemptions as to commodities put up in variable weights or sizes for sale intact and either customarily not sold as individual units or customarily weighed or measured at time of sale to the consumer.

Section 34. Hindering or Obstructing Officer; Penalties.—Any person who shall hinder or obstruct in any way the [secretary] Attorney General, the director or any one of the inspectors or a sealer or deputy sealer in the performance of his official duties shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than twenty dollars (\$20) or more than two hundred dollars (\$200), or by imprisonment for not more than three months, or by both such fine and imprisonment.

Section 35. Impersonation of Officer; Penalties.—Any person who shall impersonate in any way the [secretary] Attorney General, the director or any one of the inspectors or a sealer or deputy sealer by the use of his seal or a counterfeit of his seal or in any other manner shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than one hundred dollars (\$100), or more than five hundred dollars (\$500), or by imprisonment for not more than one year, or by both such fine and imprisonment.

Section 37. Injunction.—The [secretary] Attorney General is authorized to apply to any court of competent jurisdiction for, and such court upon hearing and for cause shown may grant, a temporary or permanent injunction restraining any person from violating any provision of this act.

Section 2. This act shall take effect immediately.

APPROVED—The 18th day of December, A. D. 1968.

RAYMOND P. SHAFER.