

No. 141

AN ACT

HB 1619

Amending the act of December 1, 1965 (P.L.988), entitled, as amended, "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 Attorney General and Department of Justice and certain local officials; and prescribing penalties," adding definitions and further providing for method of sale of commodities and certain package and enforcement provisions; and changing penalties.

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

Section 1. Section 2, act of December 1, 1965 (P.L.988), known as the "Weights and Measures Act of 1965," is amended by adding two new clauses to read:

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:

* * *

(12) "*Consumer package*" or "*package of consumer commodity.*" *A commodity in package form that is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals, or use by individuals for the purposes of personal care or in the performance of services ordinarily rendered in or about the household or in connection with personal possessions, and which usually is consumed or expended in the course of such consumption or use.*

(13) "*Nonconsumer package,*" or "*package of nonconsumer commodity.*" *Any commodity in package form other than a consumer package, and particularly a package designed solely for industrial or institutional use or for wholesale distribution only.*

Section 2. Section 3 of the act is amended to read:

Section 3. Systems of Weights and Measures.—The system of weights and measures in customary use in the United States and the metric system of weights and measures are jointly recognized and one or [the other] *both* of these systems shall be used for all commercial purposes in the Commonwealth of Pennsylvania. The definitions of basic units of weight and measure, the tables of weight and measure and weights and measures equivalents as published by the National Bureau of Standards are recognized and shall govern weighing and measuring equipment and transactions in the State.

Section 3. Section 22 of the act amended December 18, 1968 (Act No. 396), is amended to read:

Section 22. Packages; Declarations of Quantity and Origin; Variations; Exemptions.—(a) Except as otherwise provided in this act, any commodity in package form introduced or delivered for introduction into or received in intrastate commerce kept for the purpose of sale or offered or exposed for sale in intrastate commerce shall bear on the outside of the package [a] *such* definite, plain and conspicuous [declaration] *declarations* of (1) the identity of the commodity in the package unless the same can easily be identified through the wrapper or container; (2) the net quantity of the contents in terms of weight, measure or count; and (3) in the case of any package kept, offered or exposed for sale or sold any place other than on the premises where packed, the name and place of business address of the manufacturer, packer or distributor [. In] *as may be prescribed by regulation issued by the Attorney General: Provided, That, in* connection with the declaration required under clause (2), neither the qualifying term “when packed” or any words of similar import nor any term qualifying a unit of weight, measure or count (for example “jumbo,” “giant,” “full,” and the like) that tends to exaggerate the amount of commodity in a package shall be used.

(b) Under clause (2) of subsection (a) of this section, the 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.

(c) *All commodities not considered as commodities in package form within the meaning of the act or labeled as to net contents at the time of sale, shall be counted, measured or weighed in full view of the purchaser at the time of sale on a weighing or measuring device approved by the department and inspected as to accuracy by the several State, county and city inspectors of weights and measures; and a statement of result of such count, measure or weight shall be made to the purchaser by the person making the sale. All commodities not considered as commodities in package form within the meaning of the act or labeled as to net contents at the time of sale, and which shall be ordered by telephone or in some manner wherein the purchaser is not present at the time the commodities are weighed, measured or counted, shall have marked plainly thereon by the seller or his agent, the contents either by weight, measure or count, or a written memorandum of the same shall be delivered with the commodity to purchaser.*

Section 4. Section 25 of the act is amended by adding a new subsection to read:

Section 25. Advertising Packages for Sale.—* * *

(c) *Where the law or regulation requires a dual declaration of net quantity to appear on the package, only the smaller of the two units of weight or measure need appear in the advertisement.*

Section 5. Sections 28 and 29 of the act are amended to read:

Section 28. Meat, Poultry and Seafood.—(a) Except for immediate consumption on the premises where sold, or as one of several elements comprising a ready-to-eat meal sold as a unit for consumption elsewhere than on the premises where sold, all meat, meat products, poultry (whole or parts) and all seafood, except shellfish offered or exposed for sale or sold as food, shall be offered or exposed for sale and sold by weight.

(b) When meat, poultry or seafood is combined with or associated with some other food element or elements to form either a distinctive food product or food combination, such food product or combination shall be offered or exposed for sale and sold by weight and the quantity representation may be the total weight of the product or combination and a quantity representation need not be made for each of the several elements of the product or combination: *Provided, That, for ready-to-cook, whole carcass stuffed poultry, ready-to-cook stuffed poultry roasts, rolls, bars and logs, and ready-to-cook stuffed poultry products designated by terms of similar import, the label must show the total net weight of the poultry product and in proximity thereto, a statement specifying the minimum weight of poultry in the product.*

Section 29. Butter, Oleomargarine and Margarine.—Butter, oleomargarine and margarine shall be offered and exposed for sale and sold by weight and only in units of one-quarter pound, one-half pound, one pound. [or multiples of one pound avoirdupois weight.] *Butter may be sold in multiples of one pound.*

Tub butter, packaged on the premises where sold in advance of sale, may be sold in random weights.

Section 6. Section 34 of the act amended December 18, 1968 (Act No. 396), is amended to read:

Section 34. Hindering or Obstructing Officer; Penalties.—Any person who shall hinder or obstruct in any way the 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]** *in a summary proceeding* 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 7. Section 36 of the act is amended to read:

Section 36. Offenses and Penalties.—Any person who, by himself or by his servant or agent, or as the servant or agent of another person, performs any one of the acts enumerated in clauses (1) through (9) of this section, shall **[be guilty of a misdemeanor, and]** upon a first conviction thereof

[shall] in a summary proceeding be punished by a fine of not less than twenty dollars (\$20) or more than two hundred dollars (\$200) **[upon a second conviction thereof, he shall be punished by a fine of not less than fifty dollars (\$50), or more than five hundred dollars (\$500); and upon a third or subsequent conviction thereof]. Any person who, by himself or by his servant or agent, or as the servant or agent of another person, who is convicted of performing any one of the acts enumerated in clauses (1) through (9) of this section for a second or subsequent time shall be guilty of a misdemeanor, and** he 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.

(1) Use, or have in possession for the purpose of using for any commercial purpose specified in section 10, sell, offer or expose for sale or hire, or have in possession for the purpose of selling or hiring, an incorrect weight or measure or any device or instrument used to, or calculated to, falsify any weight or measure.

(2) Use, or have in possession for the purpose of current use for any commercial purpose specified in section 10, a weight or measure that does not bear a seal or mark such as specified in section 14 unless such weight or measure has been exempted from testing by provisions of section 10 or by regulation of the secretary issued under the authority of section 8 of this act.

(3) Dispose of any rejected or condemned weight or measure in a manner contrary to law or regulation.

(4) Remove from any weight or measure contrary to law or regulation any tag, seal or mark placed thereon by the appropriate authority.

(5) Sell, offer or expose for sale less than the quantity he represents of any commodity, thing or service: Provided, however, That if a commodity is prepackaged by someone other than the possessor, the possessor shall not be deemed to have made a representation within the purview of this subsection if the representation appears on the label of the prepackaged commodity.

(6) Take more than the quantity he represents of any commodity, thing or service when, as buyer, he furnishes the weight or measure by means of which the amount of the commodity, thing or service is determined.

(7) Keep for the purpose of sale, advertise, offer or expose for sale or sell any commodity, (except commodities prepackaged by someone other than the possessor) or service in a condition or manner contrary to law or regulation.

(8) Use in retail trade, except in the preparation of packages put up in advance of sale, and of medical prescriptions, a weight or measure that is not so positioned that its indications may be accurately read and the

weighing or measuring operation observed from some position which may be reasonably assumed by a customer.


(9) Violate any provision of this act or of the regulations promulgated under the provisions of this act for which a specific penalty has not been prescribed.

Section 8. This act shall take effect immediately.

APPROVED—The 23rd day of June, A. D. 1970.

RAYMOND P. SHAFER

The foregoing is a true and correct copy of Act of the General Assembly No. 141.

A handwritten signature in cursive script, reading "Joseph P. Kelly II". The signature is written in dark ink and is positioned above the printed name of the Secretary of the Commonwealth.

Secretary of the Commonwealth.