

**DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION**

HOUSE BILL NO. _____

Weights and measures.

Sponsored by: Joint Agriculture, State and Public Lands
and Water Resources Interim Committee

A BILL

for

1 AN ACT relating to weights and measures; providing
2 definitions; providing for laboratory accreditation or
3 recognition of physical standards; providing for
4 modifications to comply with federal standard requirements;
5 establishing labeling requirements; providing for field
6 standards; providing for registered service persons;
7 providing for personnel training; providing for fees;
8 modifying requirements on delivery tickets for bulk sales;
9 modifying requirements for sale packaging advertising;
10 repealing certain provisions for fees; authorizing new
11 positions; providing appropriations; providing for a
12 continuing appropriation; and providing for an effective
13 date.

1

2 *Be It Enacted by the Legislature of the State of Wyoming:*

3

4 **Section 1.** W.S. 40-10-117 by creating a new
5 subsection (b), 40-10-118 through 40-10-120,
6 40-10-122(a)(i), (iii) through (vi) and (viii) through
7 (xii) and by creating new paragraphs (xiii) through (xxix),
8 40-10-123(a), 40-10-125(a)(ii), (iii) and (b),
9 40-10-128(a)(iii) through (v) and by creating a new
10 paragraph (vi), 40-10-129(a)(intro), (i) and (iii),
11 40-10-130, 40-10-131, 40-10-132(a)(ii) through (iv), by
12 creating new paragraphs (v) and (vi) and by renumbering (v)
13 as (vii), 40-10-135 and 40-10-136 are amended to read:

14

15 **40-10-117. Definitions.**

16

17 (b) As used in this chapter:

18

19 (i) "Accreditation" means a formal recognition
20 by the national institute of standards and technology, as
21 a laboratory that is competent to carry out specific tests
22 or calibrations or types of tests or calibrations;

23

1 (ii) "Calibration" means a set of operations
2 which establishes, under specified conditions, the
3 relationship between values indicated by a measuring
4 instrument or measuring system or values represented by a
5 material measure, to the corresponding known values of a
6 measurement;

7
8 (iii) "Commerce" means the buying and selling of
9 goods;

10
11 (iv) "Commercial weighing and measuring
12 equipment" means weighing and measuring devices
13 commercially used or employed to establish the size,
14 quantity, extent, area or measurements of goods purchased,
15 offered or submitted for sale, hire or award, or in
16 computing a basic charge or payment for services;

17
18 (v) "Condemned for repairs" means a weight or
19 measure found to be incorrect and which, following policies
20 set forth by the director, can be repaired. Weights or
21 measures which are condemned for repair shall be marked as
22 such and be sealed so that the weight or measure cannot be

1 used and is made inoperable until all appropriate repairs
2 are completed;

3

4 (vi) "Confiscation and seizure" means that an
5 incorrect weight or measure is taken into custody by the
6 department following procedures and policies set forth by
7 the director. Weights or measures which are confiscated
8 shall be marked as such and if possible shall be removed
9 from the premises to the direct custody of the department;

10

11 (vii) "Correct" as used in connection with
12 weights and measures means conformance to all applicable
13 requirements of this act;

14

15 (viii) "Department" means the department of
16 agriculture;

17

18 (ix) "Director" means the director of the
19 department of agriculture or his duly authorized
20 representative;

21

22 (x) "Field standard" means a physical standard
23 that meets specifications and tolerances in the National

1 Institute of Standards and Technology Handbook 105-series
2 standards, is traceable to the reference or working
3 standards through comparisons or using acceptable
4 laboratory procedures as adopted by the National Conference
5 on Weights and Measures and published in the United States
6 Department of Commerce National Institute of Standards and
7 Technology Handbook 143, "State Weights and Measures
8 Laboratories Program Handbook," and is used in conjunction
9 with commercial weighing and measuring equipment. All
10 field standards may be defined by rule and regulation and
11 shall be verified upon their initial receipt and as often
12 thereafter as deemed necessary by the director;

13

14 (xi) "International system of units" means the
15 modernized metric system as established in 1960 by the
16 general conference on weights and measures as interpreted
17 or modified for the United States by the secretary of
18 commerce;

19

20 (xii) "Mass" means the same as "weight";

21

22 (xiii) "Net weight" means the weight of a
23 commodity excluding any materials, substances or items not

1 considered to be part of the commodity. Materials,
2 substances or items not considered to be part of the
3 commodity include, but are not limited to, containers,
4 conveyances, bags, wrappers, packaging materials, labels,
5 individual piece coverings, decorative accompaniments and
6 coupons, except that packaging materials may be considered
7 to be part of services such as shipping;

8
9 (xiv) "Package" means any commodity put up or
10 packaged in any manner in advance of sale in units suitable
11 for either wholesale or retail sale;

12
13 (xv) "Physical standard" means weights and
14 measures that are traceable to the United States prototype
15 standards supplied by the federal government, or approved
16 as being satisfactory by the National Institute of
17 Standards and Technology. Physical standards shall be the
18 state reference and working standards for weights and
19 measures and shall be maintained in such calibration as
20 prescribed by the National Institute of Standards and
21 Technology as demonstrated through laboratory accreditation
22 or recognition;

23

1 (xvi) "Primary standards" means the physical
2 standards of the state that serve as the legal reference
3 from which all other standards and weights and measures are
4 derived;

5
6 (xvii) "Random weight package" means a package
7 that is one of a lot, shipment or delivery of packages of
8 the same commodity with no fixed pattern of weights;

9
10 (xviii) "Recognition" means a formal recognition
11 by the National Institute of Standards and Technology
12 weights and measures division that a laboratory has
13 demonstrated the ability to provide traceable measurement
14 results and is competent to carry out specific tests or
15 calibrations or specific types of tests or calibrations;

16
17 (xix) "Reference standard" means:

18
19 (A) A standard, generally of the highest
20 metrological quality available at a given location, from
21 which measurements made at that location are derived; or

22

1 (B) The physical standards of the state
2 that serve as the legal reference from which all other
3 standards for weights and measures within that state are
4 derived.

5
6 (xx) "Registered service person" means an
7 individual who for hire, award, commission or any other
8 payment of any kind, installs, services, repairs or
9 reconditions a commercial weighing or measuring device, and
10 who is registered with the director;

11
12 (xxi) "Reject" means a weight or measure found
13 to be incorrect, and following policies set forth by the
14 director may be used until repaired. A weight or measure
15 which is rejected shall be marked as such, and may be used
16 for the period of time specified pursuant to rule and
17 regulation;

18
19 (xxii) "Sale from bulk" means a sale of
20 commodities in which the quantity is determined at the time
21 of sale;

22

1 (xxiii) "Secondary standards" means the physical
2 standards that are traceable to the primary standards
3 through comparisons, using acceptable laboratory
4 procedures, and used in the enforcement of weights and
5 measures laws and regulations;

6
7 (xxiv) "Standard package" means a package that
8 is one of a lot, shipment or delivery of packages of the
9 same commodity with identical net contents declarations,
10 such as, one liter (1L) bottles or twelve fluid ounce (12
11 fl oz) cans of carbonated soda, five hundred gram (500 g)
12 or five pound (5 lb.) bags of sugar, one hundred meter (100
13 m) or three hundred foot (300 ft.) packages of rope;

14
15 (xxv) "Traceability" means the property of the
16 result of a measurement or the value of a standard where it
17 can be related to stated references, through an unbroken
18 chain of comparisons all having stated uncertainties;

19
20 (xxvi) "Uncertainty" means a parameter
21 associated with the result of a measurement that
22 characterizes the dispersion of the values that could
23 reasonably be attributed to the measurement;

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

(xxvii) "Verification" means the formal evaluation of a standard or device against the specifications and tolerances for determining conformance;

(xxviii) "Weight" as used in connection with any commodity or service means net weight. When a commodity is sold by drained weight, the term means net drained weight. When used in this chapter, "weight" and "mass" have the same meaning;

(xxix) "Weight and measure" means weights and measures of every kind, instruments and devices for weighing and measuring, and any appliance or accessory associated with such instruments or devices;

(xxx) "Working standard" means:

(A) A standard that is usually calibrated against a reference standard and is used routinely to calibrate or check material measures, measuring instruments or reference materials; or

1 (B) The physical standards that are
2 traceable to the reference standards through comparisons,
3 using acceptable laboratory procedures and used in the
4 enforcement of weights and measures laws and regulations.

5
6 (xxxi) "This act" or "this chapter" means W.S.
7 40-10-117 through 40-10-136.

8
9 **40-10-118. Systems of weights and measures.**

10 [Staff Note: There is a name change to this title. It
11 will not show up in the final draft.]

12
13 **40-10-119. Physical standards.**

14
15 Weights and measures that are traceable to the United
16 States prototype standards supplied by the federal
17 government, or approved ~~as being satisfactory~~ by the United
18 States Department of Commerce National Institute of
19 Standards and Technology, shall be the state primary
20 standards of weights and measures, and shall be maintained
21 in such calibration as prescribed by the United States
22 Department of Commerce National Institute of Standards and
23 Technology or demonstrated through laboratory accreditation

1 or recognition. ~~All secondary~~ Field standards may be
2 prescribed by the director and shall be verified upon their
3 initial receipt, and as ~~often thereafter as deemed~~
4 ~~necessary by the director~~ specified by rule and regulation.

5
6 **40-10-120. Technical requirements for weighing and**
7 **measuring devices.**

8
9 (a) The specifications, tolerances, and other
10 technical requirements for commercial, law enforcement,
11 data gathering and other weighing and measuring devices as
12 adopted by the National Conference on Weights and Measures
13 and published in the United States Department of Commerce
14 National Institute of Standards and Technology Handbook 44,
15 "Specification, Tolerances, and Other Technical
16 Requirements for Weighing and Measuring Devices," shall
17 apply to weighing and measuring devices in this state,
18 ~~unless modified or rejected~~ and may be amended by rule or
19 regulation.

20
21 (b) The Uniform Regulation for National Type
22 Evaluation as adopted by the National Conference on Weights
23 and Measures and published in the United States Department

1 of Commerce National Institute of Standards and Technology
2 Handbook 130, "Uniform Laws and Regulations," are adopted
3 and shall apply to type evaluation in this state, ~~unless~~
4 ~~modified or rejected~~ and may be amended by rule or
5 regulation.

6
7 **40-10-122. Powers and duties of the director.**

8
9 (a) The director shall:

10
11 (i) Maintain traceability of the state standards
12 to the national standards ~~in the possession of~~ established
13 by the United States Department of Commerce National
14 Institute of Standards and Technology as demonstrated
15 through laboratory recognition or accreditation;

16
17 (iii) Issue reasonable rules and regulations for
18 the enforcement of this act; ~~which regulations shall have~~
19 ~~the force and effect of law;~~

20
21 (iv) Grant ~~any~~ exemptions from the provisions of
22 this act or any regulations promulgated pursuant thereto

1 when appropriate ~~to~~for the maintenance of good commercial
2 practices within the state;

3

4 (v) Conduct investigations to ensure compliance
5 with this act and the rules and regulations promulgated
6 pursuant to this act;

7

8 (vi) Delegate ~~to appropriate personnel any of~~
9 ~~these responsibilities for~~ authority to appropriate
10 personnel as required for the proper administration and
11 enforcement of this act;

12

13 (viii) ~~Inspect and test, to ascertain if they~~
14 ~~are correct,~~ Promulgate rules and regulations regarding
15 inspecting and testing weights and measures used
16 commercially, used to ascertain if they are correct;

17

18 (ix) Approve for use, and ~~may mark, such~~ weights
19 and measures ~~as are~~ found to be correct, ~~and shall~~ reject
20 and mark as rejected, ~~or condemn, and~~ mark as condemned,
21 and make inoperable ~~such~~ weights and measures ~~as are~~ found
22 to be incorrect. Rejected weights and measures ~~that have~~
23 ~~been rejected~~ shall be condemned and made inoperable if not

1 corrected within the time specified or if used in a manner
2 not specifically authorized;

3

4 (x) Weigh, measure or inspect packaged
5 commodities kept, offered or exposed for sale, sold or in
6 the process of delivery, to determine whether they contain
7 the amounts represented and whether they are kept, offered
8 or exposed for sale in accordance with this act or rules
9 and regulations promulgated pursuant to this act. In
10 carrying out the provisions of this ~~subsection~~paragraph,
11 the director shall employ recognized sampling procedures,
12 ~~such as are designated in~~adopted by National Conference on
13 Weights and Measures and published in the United States
14 Department of Commerce National Institute of Standards and
15 Technology Handbook 133, "Checking the Net Contents of
16 Packaged Goods;"

17

18 (xi) Prescribe, by rule and regulation, the
19 appropriate term, ~~or~~ unit of weight or unit of measure to
20 be used, ~~whenever he determines in the case of a specific~~
21 ~~commodity that~~whenever an existing practice of declaring
22 the quantity by weight, measure, numerical count, time or
23 combination thereof, does not facilitate value comparisons

1 by consumers, or ~~offers an opportunity for~~ may lead to
2 consumer confusion;

3

4 (xii) Allow reasonable variations from the
5 stated quantity of contents, ~~which shall include those~~
6 caused by to allow for loss or gain of moisture during the
7 course of good distribution practice or by unavoidable
8 deviations in good manufacturing practice only after the
9 commodity has entered intrastate commerce; ~~;~~

10

11 (xiii) Establish labeling requirements,
12 requirements for the presentation of cost-per-unit
13 information, establish standards of weight, measure, count
14 and fill for any packaged commodity and establish
15 requirements for open dating information;

16

17 (xiv) Verify the field standards for weights and
18 measures used by any jurisdiction or registered service
19 person operating within Wyoming before being put into
20 service, and as often thereafter as deemed necessary by the
21 director, and approve the same when found to be correct;

22

1 (xv) Provide for registration of persons
2 qualified by training and experience to install, service
3 and repair weighing or measuring devices;

4
5 (xvi) Provide that only persons who are
6 registered are authorized to place in service devices which
7 have been rejected or condemned and repaired or newly
8 installed devices, whether new or used, until an official
9 inspection by an authorized inspector is made;

10
11 (xvii) Provide for the training of weights and
12 measures personnel and establish minimum training and
13 performance requirements, for all weights and measures
14 personnel, including county, municipal, state or registered
15 servicepersons;

16
17 (xviii) Verify advertised prices, price
18 representations and point-of-sale systems, as necessary to
19 determine:

20
21 (A) The accuracy of prices and computations
22 and proper use of the equipment; and

23

1 (B) The accuracy of prices printed or
2 recalled from a database in systems utilizing scanning or
3 coding means in lieu of manual entry. In carrying out the
4 provisions of this paragraph, the director shall:

5
6 (I) Employ recognized procedures, as
7 adopted by the National Conference on Weights and Measures
8 and published in the United States Department of Commerce
9 National Institute of Standards and Technology Handbook
10 130, "Uniform Laws and Regulations, Examination Procedures
11 for Price Verification"; and

12
13 (II) Conduct inspections and
14 investigations to ensure compliance.

15
16 (xix) Establish fees for testing and inspection,
17 which may include actual hourly cost plus mileage for any
18 inspections requested other than the routine inspection.
19 The hourly cost shall be as determined by the director and
20 the mileage cost shall be as provided by WS. 9-3-103.

21 **[Staff Note: Are there any other parameters for the fees,**
22 **such as for testing or inspections?]**

23

1 **40-10-123. Special enforcement powers.**

2

3 (a) When necessary for the enforcement of this act or
4 rules and regulations promulgated pursuant to this act, the
5 director ~~or his designee~~ is:

6

7 (i) Authorized to enter any commercial premises
8 open to the public during normal business hours, ~~except~~
9 ~~that in the event the premises are~~ If the premises are not
10 open to the public, he shall ~~first present his credentials~~
11 ~~and~~ obtain consent before making entry, ~~unless~~ or obtain a
12 search warrant; ~~has previously been obtained;~~

13

14 (ii) Empowered to issue stop-use, hold and
15 removal orders with respect to any weights and measures
16 commercially used, ~~and stop sale, hold and removal orders~~
17 ~~with respect to~~ or any packaged commodities or bulk
18 commodities kept, offered or exposed for sale; and

19

20 (iii) Empowered to seize, ~~for use~~ as evidence,
21 ~~without formal warrant,~~ any incorrect or unapproved weight,
22 measure, package or commodity found to be used, retained,
23 offered or exposed for sale or sold in violation of the

1 provisions of this act or rules and regulations promulgated
2 pursuant to this act;~~:-~~

3

4 (iv) Authorized to report the results of
5 investigations and inspections to the owner or person in
6 charge by hand delivering, mailing or sending
7 electronically. No acknowledgement of receipt of an
8 investigation or inspection report is required.

9

10 **40-10-125. Misrepresentation of quantity or pricing.**

11

12 (a) No person shall:

13

14 (ii) Take more than the represented quantity
15 when, ~~as buyer,~~ he furnishes the weight or measure by means
16 of which the quantity is determined; or

17

18 (iii) Represent the quantity in any manner
19 ~~calculated or intending~~ tending to mislead or ~~in any way~~
20 deceive another person.

21

22 (b) No person shall misrepresent the price of any
23 commodity or service sold, offered, exposed or advertised

1 for sale by weight, measure or count, nor represent the
2 price in any matter ~~calculated or intending~~tending to
3 mislead or in any way deceive a another person.

4

5 **40-10-128. Sale from bulk.**

6

7 (a) Except when the parties agree in advance that a
8 delivery ticket is not required, all bulk sales in which
9 the buyer and seller are not both present to witness the
10 measurement shall be accompanied by a delivery ticket
11 containing the following information:

12

13 (iii) The quantity delivered and the quantity
14 upon which the price is based, if this differs from the
15 delivered quantity, such as when temperature compensated
16 sales are made;

17

18 (iv) The identity of the product in the most
19 descriptive terms commercially practicable, including any
20 quality representation made in connection with the sale;
21 and

22

1 (v) The count of individually wrapped packages,
2 ~~if more than one (1).~~ for commodities purchased from bulk,
3 but delivered in packages;

4
5 (vi) The unit price, unless all parties agree
6 the unit price is not required.

7
8 **40-10-129. Information required on packages.**

9
10 (a) Except as otherwise provided in this act or by
11 rule or regulation promulgated pursuant to this act, the
12 outside of any package kept for the purpose of sale or
13 offered or exposed for sale shall ~~bear on the outside of~~
14 ~~the package~~ include a definite, plain and conspicuous
15 declaration of:

16
17 (i) The identity of the packaged commodity ~~in~~
18 ~~the package, unless the same can easily be identified~~
19 ~~through the wrapper or container;~~ except food, other than
20 meat or poultry, which has been repackaged in a retail
21 establishment displayed to the purchaser so that either:

22

1 (A) Its labeling is clearly in view or
2 viewable on a counter card, sign or other appropriate
3 device bearing prominently and conspicuously the common or
4 usual name of the food; or

5

6 (B) The common or usual name of the food is
7 clearly revealed by its appearance.

8

9 (iii) The name and place of business of the
10 manufacturer, packer or distributor, ~~in the case~~ of any
11 package kept, offered or exposed for sale, or sold in any
12 place other than on the premises where packed.

13

14 **40-10-130. Declarations of unit price on random**
15 **weight packages.**

16

17 In addition to the declarations required by W.S. ~~40-10-128~~
18 40-10-129, any package ~~being one of~~ in a lot containing
19 random weights of the same commodity, ~~at the time it is~~
20 ~~offered or exposed for sale at retail~~, shall ~~bear~~ include
21 on the outside of the package a plain and conspicuous
22 declaration of the price per pound or kilogram and the

1 total selling price of the package, at the time it is
2 offered or exposed for sale at retail.

3

4 **40-10-131. Advertising packages for sale.**

5

6 Whenever a packaged commodity is advertised ~~in any manner~~
7 with the retail price stated, there shall be ~~closely and~~
8 ~~conspicuously associated with the retail price a~~
9 conspicuous declaration of quantity ~~as is required by law~~
10 ~~or rule or regulation to appear~~ on the package.

11

12 **40-10-132. Prohibited acts.**

13

14 (a) No person shall:

15

16 (i) Use or ~~have in possession for use in~~
17 ~~commerce~~ possess any incorrect weight or measure for use in
18 commerce;

19

20 (ii) Sell or offer for sale ~~for use in commerce~~
21 any incorrect weight or measure for use in commerce;

22

1 (iii) Remove any tag, seal or mark from any
2 weight or measure or weighing or measuring device, without
3 specific written authorization from the proper authority;

4
5 (iv) Hinder or obstruct any weights and measures
6 official in the performance of his duties; ~~or~~

7
8 (v) Use or possess any weight, measure, weighing
9 or measuring device that for use in commerce has not been
10 tested and certified as correct by the department or a
11 registered service person;

12
13 (vi) Place any weight, measure, weighing or
14 measuring device into commercial service without having a
15 current certificate of registration as a registered service
16 person; or

17
18 ~~(v)~~ (vii) Violate any provision of this act or
19 rules or regulations promulgated under this act.

20
21
22 **40-10-135. Presumptive evidence.**

23

1 Whenever there shall exist a weight or measure or weighing
2 or measuring device in or about any place in which or from
3 which buying or selling is commonly carried on, there shall
4 be a rebuttable presumption that the weight or measure or
5 weighing or measuring device is regularly used ~~for the~~
6 ~~business purposes of that place~~ in commerce.

7
8 **40-10-136. License required; fee.**

9
10 (a) Every person who owns or is responsible for a
11 ~~weights, measures~~ weight, measure, weighing or measuring
12 device regulated by this act shall obtain an annual license
13 on or before April 1 from the department ~~of agriculture in~~
14 ~~the amount authorized by W.S. 11-1-104~~ and pay a fee of one
15 hundred dollars (\$100.00). The fees collected by the
16 department under this section shall be deposited in the
17 general fund.

18
19 (b) The director shall define premise and inspection
20 locations, including physical addresses and circumstances
21 for special events.

22

1 **Section 2.** W.S. 11-1-104(b)(xiii) and 40-10-117(a)
2 are repealed.

3

4 **Section 3.**

5

6 (a) There is appropriated one hundred eighty-seven
7 thousand dollars (\$187,000.00) from the general fund to the
8 department of agriculture. This appropriation shall be for
9 the period beginning with the effective date of this act
10 and ending June 30, 2010. This appropriation shall only be
11 expended as follows:

12

13 (i) Eighty thousand dollars (\$80,000.00) shall
14 be for the coordination and administrative support of the
15 weights and measures program;

16

17 (ii) Seventy thousand dollars (\$70,000.00) shall
18 be to fund a weights and measures coordinator position as
19 authorized under paragraph (c)(i) of this section;

20

21 (iii) Thirty-seven thousand dollars (\$37,000.00)
22 shall be to support the position for an administrative

1 assistant for the weights and measures program as
2 authorized under paragraph (c)(ii) of this section.

3

4 (b) Notwithstanding any other provision of law, this
5 appropriation shall not be transferred or expended for any
6 other purpose and any unexpended, unobligated funds
7 remaining from this appropriation shall not revert as
8 provided by law on June 30, 2010. An appropriation of
9 three hundred seventy four thousand dollars (\$374,000.00)
10 shall be included in the department of agriculture's 2011-
11 2012 standard biennial budget request as follows:

12

13 (i) One hundred sixty thousand dollars
14 (\$160,000.00) shall be for the administrative support of
15 the weights and measures program;

16

17 (ii) One hundred forty thousand dollars
18 (\$140,000.00) shall be for the weights and measures
19 coordinator position;

20

21 (iii) Seventy-four thousand dollars (\$74,000.00)
22 shall be for the administrative assistant position for the
23 weights and measures program.

1

2 (c) There is authorized two (2) additional full-time
3 positions for the department of agriculture as follows:

4

5 (i) One (1) position for the coordinator of the
6 weights and measures program;

7

8 (ii) One (1) position for an administrative
9 assistant position for the weights and measures program.

10

11 **Section 4.** This act is effective July 1, 2009.

12

13

(END)