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1. Weights and Measures Law

Chapter 57, Article 17, Sections 1 through 19, New Mexico Statutes Annotated, 1978
Compilation.

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57-17-1. Definitions.

As used in this act (57-17-1 to 57-17-19 NMSA 1978):

A. "person" includes individuals, partnerships, corporations, companies, societies and associations;

B. "weight(s)" and "measure(s)" include all instrument(s) and device(s) used for weighing and measuring and their necessary and associated accessories and appliances;

C. "sell" and "sale" include barter and exchange;

D. "apparatus" includes any manual or mechanical unit, method or device used to determine weight, measure or quantity;

E. "correct" means the condition of apparatus, which by reason of its construction and adjustment, will give accurate readings or indications of weight and quantity;

F. "incorrect" means the condition of apparatus, or its construction, which precludes it from being reasonably permanent in its adjustment or which will not allow it to repeat its indications of weight or quantity with accuracy;

G. "in package form" means a good or commodity packaged or contained in advance of sale so as to constitute a unity (unit) quantity of the good or commodity; a good or commodity not contained, but upon which is marked a selling price based upon weight or measure, shall be construed to be in packaged form; a shipping container containing goods or commodities in packaged form is excluded from this definition;

H. "weight" means net weight;

I. "sale from bulk" means the sale of commodities when the quantity is determined at the time of sale;

J. "board" means the board of regents of New Mexico state university; and

K. "director" means the director of the New Mexico department of agriculture.

57-17-2. 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 either one or both of these systems shall be used for all commercial purposes in the state. The definitions of basic units of weights and measure, the tables of weight and measure and weights and measures equivalents as published by the national bureau of standards shall be used by the board in arriving at standards which shall govern weighing and measuring equipment and transactions in the state.

57-17-3. 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 shall be the state primary standards of weights and measures. The state primary standards shall be maintained in such calibration as prescribed by the national bureau of standards. Secondary standards may be prescribed by the director. Secondary standards shall be verified upon their initial receipt and as often thereafter as deemed necessary by the director.

57-17-4. Enforcement and administration.

A. Sections 57-17-1 through 57-17-19 NMSA 1978 shall be administered and enforced

by the director under the direction of the board. Such sums as may be appropriated by the legislature and fees which are collected shall be allowed to the department for salaries for inspectors and for necessary clerical employees, necessary equipment and supplies, travel and contingent expenses.

B. The board shall after due notice and hearing issue reasonable regulations to carry out the provisions of Articles 17 and 18 of this Chapter 57 NMSA 1978. The regulations shall have the force of law and may include but not limited to:

- (1) standards of weight, measure or count, reasonable standards of fill and labeling requirements for a commodity in package form; and
- (2) specifications and tolerances for apparatus, weights and measures designed to eliminate from use apparatus the inaccuracy of which would facilitate the perpetration of fraud.

57-17-5. Bonds.

A bond with sureties, to be approved by the secretary of state and conditioned upon faithful performance of duties, shall be given by the director in the penal sum of five thousand dollars (\$5,000) and, upon appointment, by each inspector in the penal sum of one thousand dollars (\$1,000). The premium on a bond required by this section shall be paid by the state.

57-17-6. Custody of state standards.

The New Mexico standards of weight and measure shall be kept in a safe and suitable place in the office of the director and shall not be removed except for repairs or certification.

57-17-7. Duties of the director.

It shall be the duty of the director to:

- A. enforce the provisions of this act (57-17-1 to 57-17-19 NMSA 1978);
- B. maintain custody of the New Mexico standards of weight and measure and of the other standards and equipment entrusted to his care;
- C. keep accurate records of all standards of weight and measure;
- D. keep and have general supervision over apparatus used to determine weight and measure offered for sale, sold or in use in the state;
- E. report annually to the governor of the state, the report to cover all activities carried out under the provisions of Articles 17 and 18 of this Chapter 57 NMSA 1978;
- F. test at least once annually all apparatus, weights and measures used in checking the receipt or disbursement of supplies in institutions supported in whole or in

part by moneys appropriated by the legislature;

G. inspect and test for accuracy, at least once annually, commercial apparatus, weights and measures used in:

- (1) determining the weights, measurement, or count of goods and commodities sold or offered for sale on the basis of weight or measure;
- (2) computing the basic charge or payment for services rendered on the basis of weight or measure; and
- (3) determining weight or measure when a charge is made for such determination; and

H. weigh, measure and inspect, from time to time, packages and amounts of goods and commodities offered for sale, sold or in the process of delivery to determine whether the weight or quantity of the good or commodity is the same as that represented by the terms of the offer or sale.

57-17-8. Powers of the director; police powers; right of entry and stoppage.

To facilitate the performance of his duties and the enforcement of the provisions of this act (57-17-1 to 57-17-19 NMSA 1978) and the regulations promulgated hereunder, the director, in the performance of his duties, is empowered to:

- A. approve for use, and seal or mark with appropriate devices, the weights and measures he finds upon inspection and test to be correct;
- B. reject and mark or tag as "recommended for repair" apparatus, weights and measures he finds upon inspection and test to be incorrect, but which in his best judgement are susceptible of satisfactory repair;
- C. condemn or seize weights and measures he finds upon inspection to be incorrect, but which in his best judgment are not susceptible of satisfactory repair;
- D. arrest by formal warrant a willful violator of the provisions of this act or the regulations promulgated hereunder; and to seize, without formal warrant, for use as evidence, incorrect or unsealed apparatus, weights and measures and packages or goods and commodities, found by him to be sold or offered for sale in violation of law;
- E. to enter, without formal warrant, a structure or premises for the purposes of inspection during business hours;
- F. conduct investigations to ensure compliance with this act; and
- G. issue stop-use, hold and removal orders with respect to any weights and measures commercially used, and stop-sale, hold and removal orders with respect to any packaged commodities or bulk commodities kept, offered or exposed for

sale.

57-17-9. Duties and powers of inspectors.

When acting under instructions and under the direction of the director, the powers and duties of the inspectors of weights and measures shall be the same as the powers and duties given to and imposed upon the director.

57-17-10. Duty of owner of incorrect apparatus.

An owner or user of apparatus of weight or measure, recommended for repair, shall cause the apparatus to be made correct within a reasonable period specified by the director or an inspector. Except, at the election of the owner or user, the apparatus may be disposed of in a manner specifically authorized by the director. An apparatus of weight or measure which has been recommended for repair shall not be used again for a commercial purpose until it has been made correct, and found to be correct, by the director or an inspector unless otherwise provided for by regulation.

57-17-11. Methods of sale of commodities; general.

A commodity in liquid form shall be sold only by liquid measure or by weight, and a commodity not in liquid form shall be sold only by weight, by measure of length or area or by count, provided, that the provisions of this section shall not apply to a commodity sold for immediate consumption on the premises of sale, to vegetables sold by the head or bunch, to cotton seed sold to cotton gins or to a commodity when in package or container form standardized by law. The board shall issue such regulations as are required to carry out the provisions of this section.

57-17-12. Declarations of packages: declarations of unit price on random packages.

A. Except as otherwise provided by law or regulation of the board, a commodity in package form shall bear on the outside of the package a definite, plain and conspicuous declaration of net quantity of the contents in terms of weight, measure or count, and in the case of any package not sold on the premises where packed, the name and place of business of the manufacturer, packer or distributor; and the identity of the commodity in the package, unless the same can easily be identified through the wrapper or container.

B. In addition to the declarations required by this section, any package being one of a lot containing random weights of the same commodity and bearing the total selling price of the package shall bear on the outside of the package a plain and conspicuous declaration of the price per single unit of weight.

57-17-13. Misleading packages.

No commodity in package form shall be so wrapped, nor be in a container so made, formed or filled as to mislead the purchaser as to the quantity of its contents, and the contents of a container shall not fall below the reasonable standard of fill as may have been prescribed for the commodity by the director.

57-17-14. Retail sales; regulation of.

The board may by regulation, when it is necessary or desirable for the protection of the public, establish standard quantities, weights and sizes by which specific commodities may be sold at retail. If any specific commodity is regulated in this regard, by another state agency or law, the regulation of that other state agency or law shall control.

57-17-15. Misrepresentation of price.

Whenever a commodity or service is sold, offered or advertised for sale by weight, measure or count, the price shall not be misrepresented, nor shall the price be represented in any manner calculated or tending to mislead or deceive a purchaser.

57-17-16. Hindering or obstructing officers; penalties.

A person who shall hinder or obstruct in any way the director or an inspector, 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 (\$20.00) or more than one hundred dollars (\$100), or by imprisonment for not more than three months, or by both fine and imprisonment.

57-17-17. Impersonation of officer; penalties.

A person who shall impersonate, in any manner, the director or an inspector, 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) nor more than five hundred dollars (\$500), or by imprisonment for not more than one year, or by both fine and imprisonment.

57-17-18. Offenses and penalties.

A 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 specified in this section shall be guilty of a misdemeanor and upon a first conviction thereof, shall be punished by a fine of not less than twenty dollars (\$20.00) or more than one hundred dollars (\$100), or by imprisonment for not more than three months, or by both fine and imprisonment; and upon a second or subsequent conviction thereof, he shall be punished by a fine of not less than fifty dollars (\$50.00) or more than five hundred dollars (\$500), or by imprisonment in the county jail for not more than one year, or by both fine and imprisonment in the discretion of the court;

A. use or have in his possession, for the purpose of using for any commercial purpose, sell, offer for sale or hire, or have in his possession for the purpose of selling or hiring, an incorrect weight or measure, or any device or instrument calculated to falsify any weight or measure;

B. use, or have in his possession for current use, in the buying or selling of any commodity or good, or for hire or award, or 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, a weight or measure which has not been sealed within the next preceding year, by the director or an inspector, unless written notice has been given to the director to the effect that the weight or measure is available for examination, or is due for re-examination, as the case may be, and unless specific written permission to use such weight or measure has been received from the office of the director;

C. dispose of any rejected or condemned weight or measure in a manner contrary to law;

D. remove from any weight or measure, contrary to law, any tag, seal or mark placed thereon by the director or an inspector;

E. sell or offer for sale, less than the quantity he represents of any commodity, good or service;

F. take more than the quantity he represents of any commodity, good or service when, as buyer, he furnishes the weight or measure by means of which the amount of the commodity, good or service is determined;

G. keep for the purpose of sale, advertise or offer for sale, or sell any commodity, good or service in a condition or manner contrary to law;

H. use in retail trade, except in the preparation of packages put up in advance of sale and of medical prescriptions, a weight or measure which is not so positioned that its indications may be accurately read and the weighing or measuring operation observed from some position which may reasonably be assumed by a customer; and

I. violate any provision of this act (57-17-1 to 57-17-19 NMSA 1978) or of the regulations promulgated under the provisions of this act, for which a specific penalty has not been prescribed.

57-17-19. Inspection fees.

The board may establish fees to recover the cost of performing services of inspection, testing or calibrating weights, measures and weighing and measuring devices when such services are requested by the person owning or using the weight, measure or device. All fees shall be placed in an account with the business office of New Mexico state university to be used for the enforcement of Articles 17 and 18 of this Chapter 57 NMSA 1978.