

## LEGISLATIVE BILL 473

Approved by the Governor March 3, 1999

Introduced by Agriculture Committee: Dierks, 40, Chairperson; Chambers, 11; Cudaback, 36; Robak, 22; Schellpeper, 18; Vrtiska, 1

AN ACT relating to the Weights and Measures Act; to amend sections 89-183, 89-186, 89-186.01, 89-187, 89-187.05, 89-187.07, 89-187.08, 89-188, and 89-196.01, Reissue Revised Statutes of Nebraska, and section 89-187.02, Revised Statutes Supplement, 1998; to change provisions relating to handbooks adopted by reference; to define terms; to provide, change, and eliminate powers and duties of the Director of Agriculture; to change enforcement procedures; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 89-183, Reissue Revised Statutes of Nebraska, is amended to read:

89-183. For purposes of the Weights and Measures Act:

(1) Actual cost ~~shall mean~~ means all the costs associated with the enforcement of the act, including overhead, administration, personnel, and equipment expenses;

(2) Certificate of Conformance ~~shall mean~~ means a National Type Evaluation Program Certificate of Conformance issued by the National Institute of Standards and Technology or a National Institute of Standards and Technology authorized laboratory establishing that the commercial weighing and measuring device, based on testing, meets the requirements of National Institute of Standards and Technology Handbook 44;

(3) Commercial weighing and measuring device ~~shall mean~~ means any weights and measures or weighing and measuring device used or employed in commerce in (a) establishing the size, quantity, extent, area, or measurement of any commodity sold, offered, or submitted for hire, (b) computing any basic charge or payment for services rendered on the basis of weight, measure, or count, or (c) establishing eligibility for any award. A commercial weighing and measuring device ~~shall also include~~ includes any accessory attached to or used in connection with a commercial weighing or measuring device when such accessory is so designed or installed that its operation affects or may affect the accuracy of the device;

(4) Commodity ~~shall mean~~ means any service or item or any combination of items forming a distinctive product sold in commerce which is affected by any determination of weight, measure, or count;

(5) Correct, when used in connection with commercial weighing and measuring devices, ~~shall mean~~ means conformance to all applicable requirements of the act;

(6) Department ~~shall mean~~ means the Department of Agriculture or its authorized agent;

(7) Director ~~shall mean~~ means the Director of Agriculture or his or her designated employee, representative, or authorized agent;

(8) Kept for sale, in any of its variant forms, ~~shall mean~~ means the possession of commodities by a business which sells such commodities;

(9) Modification or modified, when used in connection with commercial weighing and measuring devices, means any change which does not alter the original metrological design characteristics as specified by the device manufacturer or National Type Evaluational Program technical policies;

(10) Net drained weight ~~shall mean~~ means the weight of a commodity excluding any materials, substances, or items not considered to be part of the commodity. Materials, substances, or items not considered to be part of the commodity ~~shall~~ include free liquid, containers, conveyances, bags, wrappers, packaging materials, labels, individual piece coverings, decorative accompaniments, prizes, and coupons;

~~(10)~~ (11) Net weight ~~shall mean~~ means the weight of a commodity excluding any materials, substances, or items not considered to be part of the commodity. Materials, substances, or items not considered to be part of the commodity ~~shall~~ include containers, conveyances, bags, wrappers, packaging materials, labels, individual piece coverings, decorative accompaniments, prizes, and coupons;

~~(11)~~ (12) Package ~~shall mean~~ means any commodity put up or packaged in any container in advance of sale in units suitable for sale;

~~(12)~~ (13) Person means any individual, partnership, limited liability company, association, corporation, or organized group of persons,

whether incorporated or not;

(14) Primary standards ~~shall mean~~ means the physical standards of the state which serve as the legal reference from which all other standards are derived;

~~(13)~~ (15) Sale, in any of its variant forms, ~~shall mean~~ means sale, to barter, exchange, offer for sale, or expose for sale, in any of their variant forms, or otherwise supply;

~~(14)~~ (16) Sale from bulk ~~shall mean~~ means sale, in any of its variant forms, of commodities when the quantity is determined at the time of sale;

~~(15)~~ (17) Secondary standards ~~shall mean~~ means the physical standards which are traceable to the primary standards through comparisons using acceptable laboratory procedures. Such standards shall be used in the sale of a commodity or in the verification of weights and measures or weighing and measuring devices for accuracy;

~~(16)~~ (18) Tare weight ~~shall mean~~ means the weight of containers, conveyances, bags, wrappers, packaging materials, labels, individual piece coverings, decorative accompaniments, prizes, coupons, or items not considered to be part of the commodity deducted from the gross weight to determine the weight of the commodity;

~~(17)~~ (19) Weighing and measuring device ~~shall mean~~ means all instruments and devices of every kind used to determine the quantity of any commodity and ~~shall include~~ includes weights and measures and any appliances and accessories associated with any such instruments and devices except meters, appliances, and accessories which are exempted from the requirements of the act pursuant to subdivision (5) of section 89-187;

~~(18)~~ (20) Weighing and measuring establishment ~~shall mean~~ means a location with one or more commercial weighing and measuring devices or any operation which employs commercial weighing and measuring devices which are mobile; and

~~(19)~~ (21) Weight, when used in connection with any commodity, ~~shall mean~~ means net weight, except when a commodity is sold by drained weight, the term ~~shall mean~~ means net drained weight.

Sec. 2. Section 89-186, Reissue Revised Statutes of Nebraska, is amended to read:

89-186. (1) The Legislature hereby adopts by reference the following:

(a) The standards of the National Conference on Weights and Measures published in National Institute of Standards and Technology Handbook 44 entitled Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices as it exists on ~~September 9, 1993~~ the effective date of this act, except ~~that in~~ Section 3.31. Vehicle - Tank meters. UR.2.2. Ticket Printers; Customer Ticket, Section 2.20. Scales, N.3. Minimum Test Weights and Test Loads; and Table 4, are not adopted. In addition to the language found in Section 3.30. Liquid-Measuring Devices, S.1.6.4., S.1.6.5., UR.3.2., and UR.3.3. of ~~the National Institute of Standards and Technology Handbook 44~~ such handbook, any computing device in which a product or grade is offered for sale at more than one unit price may also compute at the lowest possible unit price for such transaction. All prices shall still be displayed or posted on the face of the dispenser. Such handbook shall govern all commercial and law enforcement weighing and measuring devices in the state;

(b) The Uniform Regulation for the Method of Sale of Commodities of the National Conference on Weights and Measures published in National Institute of Standards and Technology Handbook 130 entitled Uniform Laws and Regulations as it exists on ~~September 9, 1993~~ the effective date of this act. Such handbook shall be used to determine the proper units of measurement to be used in the keeping for sale or sale of commodities;

(c) The Uniform Packaging and Labeling Regulation of the National Conference on Weights and Measures published in National Institute of Standards and Technology Handbook 130 entitled Uniform Laws and Regulations as it exists on ~~September 9, 1993~~ the effective date of this act. Such handbook shall govern the packaging and labeling by weight, measure, or count of commodities kept for sale or sold in this state; and

(d) The procedures designated in National Institute of Standards and Technology Handbook 133 entitled Checking the Net Contents of Packaged Goods as it exists on ~~September 9, 1993~~ the effective date of this act.

(2) Copies of the handbooks adopted by reference in this section shall be filed with the Secretary of State, Clerk of the Legislature, and Department of Agriculture.

(3) Whenever there exists an inconsistency between the provisions of the Weights and Measures Act other than this section and any of the handbooks adopted by reference, the requirements of such provisions of the act shall

control.

Sec. 3. Section 89-186.01, Reissue Revised Statutes of Nebraska, is amended to read:

89-186.01. (1) No person shall sell a commercial weighing and measuring device within the State of Nebraska unless a Certificate of Conformance has been issued for the device except when the device is exempted by subsection (6) of this section.

(2) No person shall use a commercial weighing and measuring device within the State of Nebraska unless a Certificate of Conformance has been issued for the device prior to use except when the device is exempted by subsection (3), (4), or (5) of this section.

(3) Commercial weighing and measuring devices in service in Nebraska prior to September 6, 1991, which meet the specifications, tolerances, and other technical requirements of National Institute of Standards and Technology Handbook 44 shall be exempt from meeting the requirements for the Certificate of Conformance.

(4) Commercial weighing and measuring devices removed from service by the owner or on which the department has issued a removal order after September 6, 1991, and returned to service at a later date shall be modified to meet all specifications, tolerances, and other technical requirements of National Institute of Standards and Technology Handbook 44 adopted by the Legislature on the date of the return to service. Such commercial weighing and measuring devices shall not be required to have been issued a Certificate of Conformance.

(5) Commercial weighing and measuring devices in service prior to September 6, 1991, which are modified ~~or upgraded~~ after such date shall meet all specifications, tolerances, and other technical requirements of National Institute of Standards and Technology Handbook 44 adopted by the Legislature on the date of the modification. ~~or upgrading.~~ Such commercial weighing and measuring devices shall not be required to have been issued a Certificate of Conformance.

(6) Commercial weighing and measuring devices in service prior to September 6, 1991, and sold after such date shall be modified by the seller, unless the buyer and seller agree by contract to exchange the modification responsibility, to meet all specifications, tolerances, and other technical requirements of National Institute of Standards and Technology Handbook 44 adopted by the Legislature on the date sold. Such commercial weighing and measuring devices shall not be required to have been issued a Certificate of Conformance.

Sec. 4. Section 89-187, Reissue Revised Statutes of Nebraska, is amended to read:

89-187. The director shall:

(1) Maintain traceability of the primary standards to the National Institute of Standards and Technology;

(2) Enforce the provisions of the Weights and Measures Act;

(3) Adopt and promulgate reasonable rules and regulations for the enforcement of the act including the following:

(a) Requirements for the voluntary registration of sales and repair personnel for commercial weighing and measuring devices including:

(i) Registration fees for such personnel which shall not exceed the actual cost to defray the operation of the voluntary registration program;

(ii)(A) Qualifications for registration, which may include examinations, (B) performance standards to maintain registration, (C) types of equipment necessary for the work to be performed by the personnel, (D) responsibilities and privileges of registration, and (E) revocation and suspension of such registration and probation of the registrant; and

(iii) Minimum standards for the installation and maintenance of commercial weighing and measuring devices;

(b) Additional standards not specifically provided for in the act;

(c) Standards for (i) attachments or parts entering into the construction or installation of commercial weighing and measuring devices which shall tend to secure correct results in the use of such devices and (ii) the setting of laboratory fees which shall not exceed the actual cost for testing, correcting, calibrating, and verifying secondary standards and the establishment of standard laboratory operating procedures;

(d) Requirements for the suitable use of commercial weighing and measuring devices; and

(e) Guidelines for the appropriate method of weighing or measuring whenever the director determines that such guidelines would further the purpose of the act;

(4) Establish standards of weight, measure, or count, reasonable standards of fill, and standards for the presentation of cost-per-unit

information for any commodity;

(5) Upon an application filed with the department by the applicant, grant exemptions, including specific exemptions for single-use commercial weighing and measuring devices, from the provisions of the act or the rules and regulations when the applicant on such application provides assurances, acceptable to the director, that such exemption is appropriate to the maintenance of good commercial practices within the state. Notwithstanding any other provision of the act, meters used by a public utility system for the measurement of electricity, natural or manufactured gas, water, or the usage of communication services, the appliances or accessories associated with such meters, and all weighing and measuring devices inspected or tested by the Public Service Commission shall be exempt from the registration, inspection, and testing requirements of the act, except that this exemption shall not apply to meters which determine the weight or measurement of motor fuel;

(6) Conduct investigations to insure compliance with the act;

(7) Delegate to appropriate personnel any of these responsibilities for the proper administration of the director's office;

(8) In his or her discretion, inspect and test weighing and measuring devices kept for sale or sold;

(9) Inspect and test annually and from time to time, as in the director's judgment seems necessary, to ascertain whether commercial weighing and measuring devices are correct;

(10) Register and test as far as practical all commercial weighing and measuring devices used in checking the receipt or disbursement of supplies in every institution for which funds are appropriated by the Legislature;

(11) Test annually and at the request of the Nebraska State Patrol all weighing and measuring devices used for the enforcement of the provisions of sections 60-329, 60-331, and 60-6,294. The agency responsible for such weighing and measuring devices shall pay the department for the actual cost of such tests. The department shall bill test fees to such agency upon completion of the test;

(12) Approve for use and may mark commercial weighing and measuring devices which the director finds to be correct and shall reject and mark or tag as rejected such commercial weighing and measuring devices which the director finds to be not correct or not registered and inspected in accordance with the Weights and Measures Act. Commercial weighing and measuring devices that have been rejected may be seized if not made correct within the time specified or if used or disposed of in a manner not specifically authorized. The director shall condemn and may seize commercial weighing and measuring devices which are found not to be correct and not capable of being made correct;

(13) Weigh, measure, or inspect commodities kept for sale, sold, or in the process of delivery to determine whether they contain the amounts represented and whether they are kept for sale or sold in accordance with the act or the rules and regulations. When commodities are found not to contain the amounts represented or are found to be kept for sale, sold, or in the process of delivery in violation of the act, the director may issue stop-sale, hold, or removal orders and may mark or tag such commodities as being in violation of the act. In carrying out the provisions of this section, the director shall employ recognized procedures pursuant to subdivisions (1)(b) through (d) of section 89-186;

(14) Provide for the weights and measures training of inspection personnel and adopt and promulgate by rule and regulation minimum training requirements which shall be met by all inspection personnel;

(15) Adopt and promulgate rules and regulations prescribing the appropriate term or unit of measurement to be used whenever the director determines in the case of a specific commodity that an existing practice of declaring the quantity by weight, measure, numerical count, or combination thereof does not facilitate value comparisons by consumers or offers an opportunity for consumer confusion;

(16) Allow reasonable variations from the stated quantity of contents which shall include those caused by loss or gain of moisture during the course of good distribution practice or by unavoidable deviations in good manufacturing practice only after the commodity has entered intrastate commerce;

(17) Verify advertised prices, price representations, and point-of-sale systems, as deemed necessary, to determine: (a) The accuracy of prices, quantity, and computations; (b) the correct use of the equipment; and (c) if such systems utilize scanning or coding means in lieu of manual entry, the accuracy of prices and quantity printed or recalled from a data base;

(18) On or before July 1 of each year, notify all persons who have registered any commercial weighing or measuring device of the amount of fees

which are due and that such fees shall be due on August 1 of each year and shall be delinquent after such date;

~~(18)~~ (19) Require all persons who operate a weighing and measuring establishment to obtain a permit to operate such establishment pursuant to section 89-187.01 and to pay to the department an application permit fee pursuant to section 89-187.02; and

~~(19)~~ (20) Require, on or before August 1 of each year, all persons who operate a weighing and measuring establishment to:

(a) Register each commercial weighing and measuring device with the department upon forms furnished by the director;

(b) Pay to the department a registration fee in the amounts designated in column A;

(c) Pay device inspection fees to the department in the amounts designated in column B:

Scales:	A	B	Total Fees
Up to 35 pounds capacity.....	4.00	7.00	11.00
Multiunit Scales.....	4.00	33.00	37.00
Over 35 to 1,000 pounds capacity.....	4.00	10.00	14.00
Over 1,000 to 4,000 pounds capacity.....	4.00	21.00	25.00
Over 4,000 to 50,000 pounds capacity.....	4.00	25.00	29.00
Over 50,000 to 150,000 pounds capacity.....	4.00	30.00	34.00
Over 150,000 pounds capacity...	4.00	51.00	55.00
Length Measuring Devices:			
Cordage or fabric.....	4.00	9.00	13.00
Pumps:			
Service Station Dispensers -- per measuring element.....	4.00	5.00	9.00
High-capacity service station dispensers over 20 gallons per minute -- per hose.....	4.00	12.00	16.00
Compressed natural gas -- per hose.....	4.00	50.00	54.00
Meters:			
Vehicle tank meters.....	4.00	12.00	16.00
Loading rack meters.....	4.00	22.00	26.00
Liquid petroleum gas meters....	4.00	20.00	24.00
Liquid fertilizer meters.....	4.00	27.00	31.00
Liquid feed meters.....	4.00	27.00	31.00
Cryogenic.....	4.00	50.00	54.00
Mass Flow Metering Systems:			
Mass flow meters (all liquid)..	4.00	50.00	54.00;

and

(d) Pay a penalty as may be required by the department of twenty-five percent per month of the fees for each month any such fees are delinquent not to exceed one hundred percent of such fees. Such penalties paid shall be in addition to the fees due. The department's decision regarding whether penalties will be imposed shall be based upon the existence and extent of any mitigating circumstances that have resulted in the late payment of such fees.

Sec. 5. Section 89-187.02, Revised Statutes Supplement, 1998, is amended to read:

89-187.02. Application for a permit to operate a weighing and measuring establishment shall be made to the director on forms prescribed and furnished by the department. Such application shall include the full name and mailing address of the applicant; the names and addresses of any partners, members, or corporate officers; the name and address of the person authorized by the applicant to receive notices and orders of the department as provided in the Weights and Measures Act; whether the applicant is an individual, partnership, limited liability company, corporation, or other legal entity; the location and type of all commercial weighing and measuring devices; and the signature of the applicant. If the applicant is an individual, the application shall include the applicant's social security number. ~~On and after August 1, 1992, an~~ An application for a permit shall be made prior to the operation of a weighing and measuring establishment. The application shall be accompanied by a one-time permit fee of five dollars. Payment of the permit fee shall not preclude payment of the annual device registration and inspection fees required in section 89-187.

Sec. 6. Section 89-187.05, Reissue Revised Statutes of Nebraska, is

amended to read:

89-187.05. (1) A weighing and measuring establishment which has a permanent location for commercial weighing and measuring devices shall have a valid permit posted in a conspicuous place at the establishment, and there shall not be a change in ownership, ~~or~~ location, or business name without the permitholder obtaining a new permit. Any permit for such establishment shall lapse automatically upon a change of ownership, ~~or~~ location, or business name.

(2) A weighing and measuring establishment which does not have a permanent location for commercial weighing and measuring devices shall have a copy of a valid permit posted on or about each device and shall not have a change in ownership, business name, or permanent mailing address without the permitholder obtaining a new permit. Any permit for such establishment shall lapse automatically upon a change of ownership, business name, or permanent mailing address.

(3) The holder of any weighing and measuring establishment permit shall notify the department in writing at least thirty days prior to any change in ownership, name, or address of such establishment requiring a new permit under subsection (1) or (2) of this section. A permitholder shall notify the department in writing before there is a change of the name or address of the person authorized to receive notices and orders of the department. When an establishment is to be permanently closed, the permitholder shall return the permit to the department within one week after the closing.

Sec. 7. Section 89-187.07, Reissue Revised Statutes of Nebraska, is amended to read:

89-187.07. (1) The holder of a permit issued pursuant to the Weights and Measures Act shall comply with the act, the rules and regulations adopted and promulgated pursuant to the act, and any order of the director issued pursuant to the act. The permitholder shall not interfere with the department in the performance of its duties.

(2) A permitholder may be put on probation requiring such person to comply with the conditions set out in an order of probation issued by the director or be ordered to cease and desist pursuant to section 89-196.01 after: (a) The director determines the permitholder has not complied with subsection (1) of this section; (b) the permitholder is given written notice to comply and written notice of the right to a hearing to show cause why the specified order should not be issued; and (c) the director finds that issuing the specified order is appropriate, based on the hearing record or the available information if the hearing is waived by the permitholder.

(3) A permit may be suspended after: (a) The director determines the permitholder has not complied with subsection (1) of this section; (b) the permitholder is given written notice to comply and written notice of the right to a hearing to show cause why the permit should not be suspended; and (c) the director finds that issuing an order suspending the permit is appropriate, based on the hearing record or the available information if the hearing is waived by the permitholder.

(4) A permit may be immediately suspended and the director may order the permitholder's establishment closed prior to hearing when: (a) The director determines an immediate danger to the public health, safety, or welfare exists in the permitholder's establishment; and (b) the permitholder receives written notice to comply and written notice of the right to a hearing to show cause why the suspension should not be sustained. Within fifteen days after the suspension, the permitholder may request in writing a date for a hearing and the director shall consider the interests of the permitholder when the director establishes the date and time of the hearing, except that no hearing shall be held sooner than is reasonable under the circumstances. When a permitholder does not request a hearing date within such fifteen-day period, the director shall establish a hearing date and notify the permitholder of the date and time of such hearing.

(5) A permit may be revoked after: (a) The director determines the permitholder has committed serious, repeated, or multiple violations of any of the requirements of subsection (1) of this section; (b) the permitholder is given written notice to comply and written notice of the right to a hearing to show cause why the permit should not be revoked; and (c) the director finds that issuing an order revoking the permit is appropriate based on the hearing record or on the available information if the hearing is waived by the permitholder.

(6) Any establishment for which the permit has been suspended shall close and remain closed until the permit is reinstated. Any establishment for which the permit has been revoked shall close and remain closed until a new permit has been issued.

(7) The director may terminate proceedings to suspend or revoke a

permit or subject a permitholder to an order of the director described in subsection (2) of this section at any time if the reasons for such proceedings no longer exist. A permit which has been suspended may be reinstated, a person with a revoked permit may be issued a new permit, or a permitholder may no longer be subject to such an order if the director determines that the conditions which prompted the suspension, revocation, or order of the director no longer exist.

(8) Proceedings to suspend or revoke a permit or subject a permitholder to an order of the director described in subsection (2) of this section shall not preclude the department from pursuing other administrative, civil, or criminal actions, such as the stop-use or cease and desist order, an injunction, or a misdemeanor action.

Sec. 8. Section 89-187.08, Reissue Revised Statutes of Nebraska, is amended to read:

89-187.08. (1) Any notice or order provided for in the Weights and Measures Act shall be personally served on the permitholder or on the person authorized by the permitholder to receive notices and orders of the department or shall be sent by certified mail, return receipt requested, to the last-known address of the permitholder or the person authorized to receive such notices and orders. A copy of the notice and the order shall be filed in the records of the department.

(2) Any notice to comply provided for in the act shall set forth the acts or omissions with which the permitholder is charged.

(3) A notice of the permitholder's right to a hearing provided for in the act shall set forth the time and place of the hearing except as provided in subsection (4) of section 89-187.07. A notice of the permitholder's right to such hearing shall include notice that a permitholder's right to a hearing may be waived pursuant to subsection (5) of this section. A notice of the permitholder's right to a hearing to show cause why the permit should not be revoked shall include notice to the permitholder that the permit may be revoked or suspended, that the permitholder may be subject to an order of the director described in subsection (2) of section 89-187.07, or that the permit may be suspended and the permitholder subject to such an order if the director determines such action is more appropriate. A notice of the permitholder's right to a hearing to show cause why the permit should not be suspended shall include notice to the permitholder that the permit may be suspended or that the permitholder may also be subject to an order of the director described in subsection (2) of section 89-187.07 if the director determines such action is more appropriate.

(4) The hearings provided for in the act shall be conducted by the director at a time and place he or she designates. The director shall make a final finding based upon the complete hearing record and issue an order. If the director has suspended a permit pursuant to subsection (4) of section 89-187.07, the director shall sustain, modify, or rescind the order. All hearings shall be in accordance with the Administrative Procedure Act.

(5) A permitholder shall be deemed to waive the right to a hearing if such permitholder does not come to the hearing at the time and place set forth in the notice described in subsection (3) of this section without requesting the director at least three business ~~two~~ days before the designated time to change the time and place for the hearing, except that before an order of the director becomes final, the director may designate a different time and place for the hearing if the permitholder shows the director that the permitholder had a justifiable reason for not coming to the hearing and not timely requesting a change in the time and place for such hearing. If the permitholder waives the right to a hearing, the director shall make a final finding based upon the available information and issue an order. If the director has suspended a permit pursuant to subsection (4) of section 89-187.07, the director shall sustain, modify, or rescind the order.

(6) Any person aggrieved by the finding of the director shall have ten days from the entry of the director's order to request a new hearing if such person can show that a mistake of fact has been made which affected the director's determination. Any order of the director shall become final upon the expiration of ten days after its entry if no request for a new hearing is made.

Sec. 9. Section 89-188, Reissue Revised Statutes of Nebraska, is amended to read:

89-188. When necessary for the enforcement of the Weights and Measures Act or the rules and regulations adopted pursuant to the act, the director may:

(1) Enter any commercial premises during normal business hours, except that in the event such premises are not open to the public, the director shall first present his or her credentials and obtain consent before

making entry thereto unless a search warrant has previously been obtained;

(2) Issue stop-use, hold, and removal orders with respect to any commercial weighing and measuring device and stop-sale, hold, and removal orders with respect to any commodity kept for sale or sold;

(3) Seize, for use as evidence, without formal warrant, any commercial weighing and measuring device which is not correct or is not approved by the department or commodity found to be used, kept for sale, or sold in violation of the provisions of the act or the rules and regulations;

(4) Stop any commercial vehicle from which commodities are kept for sale, sold, or in the process of delivery on the basis of weight, measure, or count and, after presentment of his or her credentials, inspect the contents, require that the person in charge of that vehicle produce any documents in his or her possession concerning the contents, and require him or her to proceed with the vehicle to a specified place for inspection;

(5) ~~Arrest, without formal warrant, any violator of the act. For such purpose the director shall be vested with special police powers;~~

~~(6)~~ Charge and collect all fees and penalties prescribed by the act and the rules or regulations;

~~(7)~~ (6) Access all books, papers, and other information necessary for the enforcement of the act. If after inspection the director finds or has reason to believe that the requirements set forth in the act are not being met, he or she shall have access to all books, papers, records, bills of lading, invoices, and other pertinent data relating to the use, sale, or representation of any commodity including weighing and measuring devices within this state;

~~(8)~~ (7) Cooperate with and enter into agreements with any person in order to carry out the purposes of the act; ~~and~~

~~(9)~~ (8) Inspect weighing and measuring devices which are not required to be registered upon the request of the owner of such devices and seek reimbursement for the actual cost of the inspection;

(9) Establish an authorized laboratory under the National Institute of Standards and Technology, National Type Evaluation Program, and conduct field testing of weighing and measuring devices to determine if such devices meet the requirements in order to issue a Certificate of Conformance. The department shall be reimbursed for the actual cost of such tests by the person seeking such certification; and

(10) Enter into a settlement with any person regarding the disposition of any permit or cease and desist order.

Sec. 10. Section 89-196.01, Reissue Revised Statutes of Nebraska, is amended to read:

89-196.01. (1) Whenever the director has reason to believe that any person has violated any provision of the Weights and Measures Act or any rule or regulation adopted and promulgated pursuant to the act, ~~an order a hearing notice may be entered issued~~ issued requiring the person to appear before the director to show cause why an order should not be entered requiring such person to cease and desist from the violation charged. ~~Such order hearing notice shall set forth the alleged violation, fix the time and place of the hearing, and provide for notice of specify the action to be considered at such hearing.~~ Hearings shall be conducted as provided for in section 89-187.08. After a hearing, if the director finds such person to be in violation, he or she ~~shall~~ may enter an order requiring the person to cease and desist from the specific act, practice, or omission.

(2) The director may apply to the county attorney of the county in which the violation occurred or the Attorney General's office to take appropriate action pursuant to sections 89-198 and 89-1,101 without first entering an order as set forth in subsection (1) of this section when there exists an endangerment to the public health, safety, or welfare.

Sec. 11. Original sections 89-183, 89-186, 89-186.01, 89-187, 89-187.05, 89-187.07, 89-187.08, 89-188, and 89-196.01, Reissue Revised Statutes of Nebraska, and section 89-187.02, Revised Statutes Supplement, 1998, are repealed.