

1 HB376
2 127649-1
3 By Representative Merrill
4 RFD: Agriculture and Forestry
5 First Read: 29-MAR-11

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8 SYNOPSIS: This bill would replace references to the
9 "national bureau of standards" with the "National
10 Institute of Standards and Technology (NIST)"
11 regarding the standards for weights and measures
12 used in this state.

13 This bill would delete certain language that
14 authorizes the commissioner to enter certain
15 premises to test weights and measures.

16 This bill would authorize the Board of
17 Agriculture and Industries to adopt rules relative
18 to labeling and packaging pursuant to the Standards
19 of NIST to implement either dual inch-pound or
20 metric labeling or solely metric labeling
21 descriptions for certain business transactions as
22 indicated by market demand.

23 This bill would require the use of
24 inch-pound or metric labeling or solely metric
25 labeling on the packaging of certain commodities.

26 This bill would delete certain requirements
27 for the regulation of milk and cream bottles and

1 containers, as well as weights and measures and
2 delivery of coal, coke, or charcoal.

3 This bill would delete certain requirements
4 precluding the sale of cornmeal, grits, or flour in
5 anything other than five to 200 pound packages.

6 This bill would delete the prohibition of
7 selling ice by any manner other than weight and the
8 requirement that a standard liquid measure be used
9 for the sale of oil at retail.

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11 A BILL
12 TO BE ENTITLED
13 AN ACT
14

15 Relating to weights and measures; to amend Sections
16 8-16-2, 8-16-3, 8-16-4, 8-16-5, 8-16-7, 8-16-15, 8-16-56,
17 8-16-90, 8-16-93, 8-16-94, and 8-16-101, Code of Alabama 1975,
18 to reference the National Institute of Standards and
19 Technology (NIST) regarding the standards for weights and
20 measures in this state; to delete outdated language related to
21 the duties of the Commissioner of Agriculture and Industries;
22 to authorize the Commissioner of Agriculture and Industries to
23 adopt rules relating to dual inch-pound or metric labeling or
24 solely metric labeling for certain business transactions; to
25 require the use of inch-pound and metric-labeling descriptions
26 or solely metric labeling on the packaging of certain
27 commodities; and to repeal Sections 8-16-95, 8-16-96, 8-16-97,

1 8-16-98, 8-16-99, 8-16-100, 8-16-102, 8-16-103, 8-16-104, and
2 8-16-105, Code of Alabama 1975, to repeal certain requirements
3 relating to the sale of certain items by weighing.

4 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

5 Section 1. Sections 8-16-2, 8-16-3, 8-16-4, 8-16-5,
6 8-16-7, 8-16-15, 8-16-56, 8-16-90, 8-16-93, 8-16-94, and
7 8-16-101, Code of Alabama 1975, are amended to read as
8 follows:

9 "§8-16-2.

10 ~~"There is but one unit or~~ The standard measure of
11 length and surface, ~~one of weight, one of capacity for liquid~~
12 substances, and ~~one of capacity for dry substances throughout~~
13 this state, ~~which must~~ shall be in conformity with the
14 standard measure of length, surface, weight, and capacity
15 established by the National Institute of Standards and
16 Technology (NIST) under the authority granted to the NIST by
17 Congress. Any firm, association, corporation, or person
18 selling, offering, or exposing for sale any commodity by
19 weight or measure which does not correspond with ~~such~~ this
20 standard or measure is guilty of a misdemeanor.

21 "§8-16-3.

22 "The standards of weights and measures received from
23 the United States ~~under a resolution of Congress approved June~~
24 ~~14, 1836, and such~~ new weights and measures ~~as shall be~~
25 received from the United States as standard weights and
26 measures in addition thereto or in renewal thereof, and ~~such~~
27 weights and measures as shall be procured by the state in

1 conformity therewith and certified by the ~~national bureau of~~
2 ~~standards~~ National Institute of Standards and Technology
3 (NIST) shall be the state standards by which all state,
4 county, and municipal standards of weights and measures shall
5 be tried, proved, and sealed.

6 "§8-16-4.

7 "All contracts made within this state for any work
8 to be done or for anything to be sold or delivered must be
9 construed to have been according to the standard of weight and
10 measure ascertained by Congress, ~~unless the parties stipulate~~
11 ~~to the contrary~~ through the authority Congress granted for the
12 regulation and maintenance of the standards and weights and
13 measures rules to the National Institute of Standards and
14 Technology (NIST).

15 "§8-16-5.

16 "(a) The state standards of weights and measures
17 shall be kept by the Commissioner of Agriculture and
18 Industries in a safe and suitable place in his office, from
19 which they shall not be removed except for repairs.

20 "(b) With respect to the state standards of weights
21 and measures, the Commissioner of Agriculture and Industries
22 shall have the following duties:

23 "(1) He shall maintain such standards in good order.

24 "(2) He shall replace such standards as are
25 incorrect and purchase such additional standards as shall be
26 necessary to complete and make up a complete standard of
27 weights and measures.

1 "(3) He shall purchase such apparatus as shall be
2 found necessary to a proper prosecution of the work of the
3 office, to be known as working standards.

4 "(4) He shall compare such working standards with
5 the state standards at such times as he shall deem necessary
6 to prove the accuracy of the working standards; and

7 "(5) He shall keep a record of all standards and
8 other apparatus belonging to the state for the purposes of
9 this chapter.

10 "(6) The commissioner shall maintain traceability of
11 the state standards to the ~~national bureau of standards~~
12 National Institute of Standards and Technology (NIST).

13 "(c) Weights and measures that are traceable to the
14 U.S. prototype standards supplied by the federal government,
15 or approved as being satisfactory by the ~~national bureau of~~
16 ~~standards~~ National Institute of Standards and Technology
17 (NIST), shall be the state primary standards of weights and
18 measures, and shall be maintained in such calibration as
19 prescribed by the ~~national bureau of standards~~ NIST. All
20 secondary standards may be prescribed by the commissioner and
21 shall be verified upon their initial receipt, and as often
22 thereafter as deemed necessary by the commissioner.

23 "§8-16-7.

24 "(a) When not otherwise provided by law, the
25 Commissioner of Agriculture and Industries within the state,
26 the county sealer within the county and the city sealer within
27 the city shall have the power and it shall be their duty to

1 inspect, test, try, and ascertain if they are correct all
2 weights, measures, and weighing or measuring devices kept,
3 offered, or exposed for sale, sold, used, or employed in
4 proving the size, quantity, extent, area, or measurement of
5 quantities, things, produce, or articles for distribution or
6 consumption purchased or offered or submitted for sale, hire,
7 or reward, in computing any charge for services rendered on
8 the basis of weight or measure or in determining weight or
9 measure when a charge is made for such determination.

10 "(b) They shall have the power to, and shall from
11 time to time, weigh or measure and inspect packages or amounts
12 of commodities of whatsoever kind kept for the purpose of
13 sale, offered, or exposed for sale, sold, or in the process of
14 delivery in order to determine whether the same contain the
15 amount represented and whether they are offered for sale or
16 sold in a manner in accordance with the law.

17 "(c) They shall, at least once each year and as much
18 oftener as they may deem necessary, see that all weights,
19 measures, and weighing or measuring devices used are correct.

20 ~~"(d) They may, for the purpose above mentioned and
21 in the general performance of their official duties, at any
22 reasonable time, enter and go into or upon, without formal
23 warrant, any stand, place, building, or premises or stop any
24 vendor, peddler, junk dealer, coal wagon, ice wagon, delivery
25 wagon, or any person whatsoever and require him, if necessary,
26 to proceed to some place which the local sealer may specify
27 for the purpose of making the proper test.~~

1 ~~(e)~~(d) Whenever the Commissioner of Agriculture or
2 Industries or a local sealer of weights and measures finds a
3 violation of the statutes relating to weights and measures, he
4 shall cause the violator to be prosecuted.

5 "§8-16-15.

6 "(a) The Board of Agriculture and Industries ~~shall~~
7 ~~have the right and power to~~ may do all of the following:

8 (1) ~~adopt~~ Adopt and promulgate all reasonable and
9 necessary rules and regulations for the better enforcement of
10 the provisions of law relative to weights and measures and the
11 sale of commodities, things, or service by weight or measure7.

12 "(2) Require the labeling and packaging of
13 commodities, things, or service by weight or measure to comply
14 with the National Institute of Standards and Technology (NIST)
15 to implement either the dual inch-pound and metric-labeling
16 descriptions or metric-only labeling for all retail and
17 wholesale business transactions, all foreign and domestic
18 trade and commerce, and for all commodities, things, or
19 services produced by state and local governments, as
20 determined by business and market demand rather than
21 government oversight.

22 "(3) ~~and to establish~~ Establish a fee payable
23 annually by all individuals or entities subject to this
24 section not to exceed one hundred fifty dollars (\$150) for
25 reimbursement of expenses incurred in the enforcement of this
26 section which shall be deposited into the Agricultural Fund of
27 the State Treasury. The annual inspection fee for those

1 individuals and entities utilizing measuring devices measuring
2 30 pounds or less shall be based upon a sliding scale broken
3 into 5 categories based upon the total dollar volume of each
4 individual or entity with the minimum rate not to exceed
5 twenty-five dollars (\$25) and the maximum not to exceed one
6 hundred fifty dollars (\$150).

7 "(b) The board shall prescribe specifications as to
8 the type of make-up and reasonable variations or tolerances
9 for all weights, measures, and weighing and measuring devices
10 used, offered, exposed for sale, sold, or given away in the
11 state.

12 "(c) Any weight, measure, or weighing or measuring
13 device which does not comply with these specifications or does
14 not conform with the state's standards within such tolerances
15 shall be a false and incorrect weight, measure, or weighing or
16 measuring device.

17 "(d) The board shall prescribe reasonable rules and
18 regulations for the submission of samples and the examination
19 of type and approval or disapproval of all types of weights or
20 measures or weighing or measuring devices used, offered, or
21 exposed for sale or given away in the state.

22 "§8-16-56.

23 "(a) The Commissioner of Agriculture and Industries
24 shall prescribe the form of weight certificate to be used by
25 all public weighmasters in this state.

26 "(b) ~~Such~~ The certificate shall state thereon the
27 kind of commodity, produce or article, the number of units of

1 the same, the date of the receipt of the commodity, produce or
2 article, the owner, agent or consignee, the total weight of
3 the commodity, produce or article, ~~the vessel, railroad, team,~~
4 ~~truck or other means~~ the method of transportation by which the
5 commodity, produce or article was received, any trade or other
6 mark thereon and such other information as may be necessary to
7 distinguish or identify the commodity, produce or article from
8 a like kind.

9 "(c) No certificate other than the one prescribed in
10 this section shall be used by any public weighmaster in this
11 state, and when so made and properly signed, such certificates
12 shall be a prima facie evidence of such weights.

13 "§8-16-90.

14 "Any person who, by ~~himself or his servant or agent,~~
15 or as ~~the servant or agent~~ of another person, shall offer or
16 expose for sale, sell, use in the buying or selling of any
17 commodity or thing or for hire or reward or in the computation
18 of any charge for services rendered on the basis of weight or
19 measure when a charge is made for such determination, retain
20 in his possession a false weight or measure or weighing or
21 measuring device or any tool or appliance used in connection
22 therewith which has not been sealed by the Commissioner of
23 Agriculture and Industries or by a local sealer of weights and
24 measures within one year, shall dispose of any condemned
25 weight, measure, l or weighing or measuring device contrary to
26 law, remove any tag placed thereon by the commissioner or a
27 local sealer, who shall sell or offer or expose for sale less

1 than the quantity he represents of any commodity, thing or
2 service, shall take or attempt to take more than the quantity
3 he represents when as the buyer he furnishes the weight,
4 measure or weighing or measuring device by means of which the
5 amount of any commodity, thing or service is determined, who
6 shall keep for the purpose of sale, offer, expose for sale or
7 sell any commodity in a manner contrary to law, who shall
8 violate any provision of this chapter for which a specific
9 penalty has not been provided or who shall sell, offer or
10 expose for sale or use or have in his possession for the
11 purpose of using or selling any device or instrument to be
12 used to, or calculated to, falsify any weight or measure,
13 shall be guilty of a misdemeanor.

14 "§8-16-93.

15 "(a) It shall be unlawful to keep for the purpose of
16 sale, offer or expose for sale, or sell any commodity in
17 package form unless the net quantity of the contents is
18 plainly and conspicuously marked on the outside of the package
19 in terms of weight, measure, or numerical count; ~~provided,~~
20 ~~however, that reasonable~~ using either dual inch-pound and
21 metric labeling or metric-only labeling. Reasonable variations
22 or tolerances shall be permitted, and ~~that~~ these reasonable
23 variations and tolerances shall be established by rules and
24 regulations made and promulgated by the State Board of
25 Agriculture and Industries; ~~and provided further, that this~~
26 ~~section shall not be construed to apply to those commodities~~

1 ~~in package form, the manner of sale of which is specifically~~
2 ~~regulated by the provisions of other sections of this chapter.~~

3 (b) The words "in package form," as used in this
4 section, shall be construed to include a commodity in a
5 package, carton, case, can, box, barrel, bottle, phial or
6 other receptacle or in coverings or wrappings of any kind put
7 up by the manufacturer, or put up prior to the order of the
8 commodity by the vendor, which may be labeled, branded,
9 stenciled or otherwise marked or which may be suitable for
10 labeling, branding, stenciling or marking otherwise, making
11 one complete package of the commodity. The words "in package
12 form" shall be construed to include both the wholesale and the
13 retail package. "Package," as used in this section, does not
14 include any container in which are packed or contained
15 packages of a smaller size of a commodity, but the provisions
16 of this section apply only to the container directly including
17 the commodity.

18 "§8-16-94.

19 (a) Whenever any commodities shall be sold or
20 delivered and no special written contract or agreement shall
21 be made to the contrary, if sold or authorized to be sold by
22 the bushel or barrel, ~~said~~ the bushel or barrel of such
23 commodities shall be the weight per bushel or barrel as is
24 generally recognized and accepted in the marketplace, and ~~the~~
25 ~~fractional part of the bushel or barrel shall be the~~
26 ~~corresponding fractional part of the weight per bushel or~~
27 ~~barrel as is generally recognized and accepted in the~~

1 ~~marketplace for such commodity~~ shall include either dual
2 inch-pound and metric labeling or metric-only labeling for the
3 weight .

4 "(b) All such commodities shall be bought or sold by
5 actual weight unless otherwise agreed to in writing between
6 the seller and buyer; provided, however, that any of such
7 commodities may be sold by numerical count; and provided
8 further, that turnips, kale, mustard and spinach salad and
9 other vegetables customarily sold by the bunch may be sold by
10 the bunch, unless those bunches are sold by weight.

11 "(c) The Commissioner of Agriculture and Industries,
12 as provided under the provisions of Section 2-2-16, is
13 authorized and empowered to promulgate rules and regulations
14 concerning minimum weights per bushel or barrel or other type
15 container for the sale of commodities, as is needed for the
16 standardization of the sale of such commodities in the
17 marketplace using either dual inch-pound and metric labeling
18 or metric-only labeling for the weight.

19 "§8-16-101.

20 "(a) Except as otherwise provided in this article or
21 when sold in the original standard container, all fruit, nuts,
22 vegetables and grain shall be sold at retail by ~~avoirdupois~~
23 ~~weight or numerical count~~ using either dual inch-pound and
24 metric labeling or by metric-only labeling for the weight.

25 "(b) The words "original standard container," as
26 used in this section, shall mean and include only barrels,
27 boxes, baskets, hampers or similar containers, the dimensions

1 or capacity of which are established by regulations of the
2 State Board of Agriculture and Industries, the contents of
3 which have not been removed or repacked by the retailer and
4 upon which is plainly and conspicuously marked the net
5 quantity of the contents ~~thereof~~ in terms of weight, measure,
6 or numerical count by using either dual inch-pound and metric
7 labeling or by metric-only labeling for the weight.

8 "(c) This section shall not apply to the sale by the
9 bunch of fresh beets, onions, turnips, carrots,
10 similar vegetables usually and customarily sold by the bunch,
11 unless those bunches are sold by weight."

12 Section 2. Sections 8-16-95, 8-16-96, 8-16-97,
13 8-16-98, 8-16-99, 8-16-100, 8-16-102, 8-16-103, 8-16-104, and
14 8-16-105, Code of Alabama 1975, are repealed.

15 Section 3. This act shall become effective on the
16 first day of the third month following its passage and
17 approval by the Governor, or its otherwise becoming law.