

HOUSE BILL No. 2063

By Committee on Agriculture and Natural Resources

1-22

9 AN ACT concerning weights and measures; relating to fees charged by
10 the secretary of agriculture; amending K.S.A. 2008 Supp. 83-214, 83-
11 219, 83-302 and 83-402 and repealing the existing sections; also re-
12 pealing K.S.A. 2008 Supp. 83-502.
13

14 *Be it enacted by the Legislature of the State of Kansas:*

15 Section 1. K.S.A. 2008 Supp. 83-214 is hereby amended to read as
16 follows: 83-214. (a) The secretary may try and prove weights, measures,
17 balances and other measuring devices on request for any person, corpo-
18 ration or institution, and when the same are found or made to conform
19 to the state standards, and otherwise fulfill such reasonable requirements
20 as the secretary may make, the secretary, or an authorized representative
21 of the secretary, may seal the same with a seal which is kept for that
22 purpose.

23 (b) Except as otherwise provided by statute, the secretary, or the
24 authorized representative of the secretary, may charge for services pro-
25 vided by the department and other necessary and incidental expenses or
26 both incurred in conjunction with the testing and proving of weights,
27 measures and other devices at a rate per hour or fraction thereof and
28 other necessary and incidental expenses which are fixed by rules and
29 regulations adopted by the secretary of agriculture, except that ~~(1)~~
30 the charges for services provided by the metrology lab shall not exceed ~~\$50~~
31 ~~\$70~~ per hour or fraction thereof; ~~and (2) in the case of the head house~~
32 ~~scale program such charges shall not exceed \$100 per hour or fraction~~
33 ~~thereof~~. The secretary may charge for subsistence and transportation of
34 personnel and equipment to such point and return. Such charges shall
35 be set by rules and regulations adopted by the secretary of agriculture.
36 The secretary may fix the manner in which any charges made pursuant
37 to this subsection are collected.

38 (c) The secretary shall remit all moneys received under subsection
39 (b) to the state treasurer in accordance with the provisions of K.S.A. 75-
40 4215, and amendments thereto. Upon receipt of each such remittance,
41 the state treasurer shall deposit the entire amount in the state treasury
42 to the credit of the weights and measures fee fund which is hereby cre-
43 ated. All expenditures from the weights and measures fee fund shall be

1 made in accordance with appropriation acts upon warrants of the director
2 of accounts and reports issued pursuant to vouchers approved by the
3 secretary or by a person designated by the secretary.

4 (d) Except as provided in K.S.A. 83-301 through 83-311, and amend-
5 ments thereto, nothing in article 2 of chapter 83 of the Kansas Statutes
6 Annotated, and amendments thereto, shall prohibit the owner of a weigh-
7 ing or measuring device or the owner's employee or agent from servicing
8 or repairing such device. However, if such device is found out of tolerance
9 and is rejected by the department of agriculture, the owner is responsible
10 for repairing the device within the time specified on the rejection tag and
11 notifying the department when the device is repaired and in operation.
12 The owner shall pay a fee commensurate with the expense incurred by
13 the secretary in performing the follow-up inspections or tests.

14 Sec. 2. K.S.A. 2008 Supp. 83-219 is hereby amended to read as fol-
15 lows: 83-219. (a) It shall be unlawful for any person:

16 (1) To offer or expose for sale, or to sell or otherwise dispose of any
17 weight, measure or weighing or measuring device that does not meet the
18 tolerances and specifications required by chapter 83 of the Kansas Stat-
19 utes Annotated, and amendments thereto, or which has been rejected
20 without first obtaining the written authorization of the secretary;

21 (2) to use or possess a weight, measure or weighing or measuring
22 device that is used for or intended to be used for commercial purposes
23 which does not meet the tolerance and specifications required by chapter
24 83 of the Kansas Statutes Annotated, and amendments thereto, or that
25 does not conform to the standard authorized by the secretary for deter-
26 mining the quantity of any commodity or article of merchandise, for the
27 purpose of:

28 (A) Buying or selling any commodity or article of merchandise;

29 (B) computation of any charge for services rendered on the basis of
30 weight or measure;

31 (C) determining weight or measure, either when a charge is made
32 for such determination or where no charge is made for use of such weight,
33 measure, weighing or measuring device;

34 (3) except as allowed in K.S.A. 83-225, and amendments thereto, to
35 break or remove any tag, mark or seal placed on any weighing or meas-
36 uring device by the secretary or a county or city inspector of weights and
37 measures, without specific written authorization from the proper author-
38 ity or to use a weighing or measuring device after the lapse of the au-
39 thorized period following the placing of a rejection tag thereon by the
40 secretary, unless further extension of time for any repair purposes is first
41 obtained from the secretary;

42 (4) to sell, offer or expose for sale, less than the represented quantity
43 of any commodity, thing or service;

- 1 (5) to take or attempt to take more of the represented quantity of any
2 commodity, thing or service when the buyer furnishes the weight, mea-
3 sure or weighing or measuring device by which the amount of any com-
4 modity, thing or service is determined;
- 5 (6) to keep for the purpose of sale, or to offer or expose for sale, or
6 to sell any commodity in a manner contrary to the law or contrary to any
7 rule and regulation;
- 8 (7) to use in retail trade, except in preparation of packages of mer-
9 chandise put up in advance of sale, a weighing or measuring device that
10 is not so positioned that its indications may be accurately read and the
11 weighing or measuring operation observed from a reasonable customer
12 position;
- 13 (8) to violate any of the provisions of chapter 83 of the Kansas Statutes
14 Annotated, and amendments thereto, or rules and regulations adopted
15 thereunder, for which a specific penalty is not provided;
- 16 (9) to sell or offer for sale, or use or possess for the purpose of selling
17 or using any device or instrument to be used or calculated to falsify any
18 weight or measure;
- 19 (10) to dispose of any rejected weight or measure in a manner con-
20 trary to law or rules and regulations;
- 21 (11) to expose for sale, offer for sale or sell any commodity in package
22 form, without it being so wrapped, or the container so made, formed or
23 filled, that it will not mislead the purchaser as to the quantity of the
24 contents of the package;
- 25 (12) to expose for sale, offer for sale or sell any commodity in any
26 container where the contents of the container fall below such reasonable
27 standard of fill as may have been prescribed for the commodity in ques-
28 tion by the secretary;
- 29 (13) to misrepresent the price of any commodity or service sold, of-
30 fered, exposed or advertised for sale by weight, measure or count, nor
31 represent the price in any manner calculated or tending to mislead or in
32 any way deceive any person;
- 33 (14) to misrepresent, or represent in a manner calculated or tending
34 to mislead or deceive an actual or prospective purchaser, the price of an
35 item offered, exposed or advertised for sale at retail;
- 36 (15) to compute or attempt to compute at the time of sale of an item,
37 a value which is not a true extension of a price per unit which is then
38 advertised, posted or quoted;
- 39 (16) to charge or attempt to charge, at the time of the sale of an item
40 or commodity, a value which is more than the price which is advertised,
41 posted or quoted;
- 42 (17) to alter a weight certificate, use or attempt to use any such cer-
43 tificate for any load or part of a load or for articles or things other than

- 1 for which the certificate is given, or, after weighing and before the deliv-
2 ery of any articles or things so weighted, alter or diminish the quantity
3 thereof;
- 4 (18) to hinder or obstruct in any way the secretary or any of the
5 secretary's authorized agents in the performance of the secretary's official
6 duties under chapter 83 of the Kansas Statutes Annotated, and amend-
7 ments thereto or any rules and regulations adopted thereunder;
- 8 (19) to fail to follow the standards and requirements established in
9 K.S.A. 83-202, and amendments thereto, or any rules and regulations
10 adopted thereunder;
- 11 (20) to fail to pay all fees and penalties as prescribed by chapter 83
12 of the Kansas Statutes Annotated, and amendments thereto, and the rules
13 and regulations adopted thereunder;
- 14 (21) to fail to keep or make available for examination or provide to
15 the secretary all inspection reports, test reports and any other service
16 reports or other information on any device owned or operated by the
17 owner or any agent or employee of the owner and other information
18 necessary for the enforcement of chapter 83 of the Kansas Statutes An-
19 notated, and amendments thereto or any rules and regulations adopted
20 thereunder, and as required by the secretary;
- 21 (22) to fail to have any commercial weight, measure or weighing and
22 measuring device tested as required by chapter 83 of the Kansas Statutes
23 Annotated, and amendments thereto or any rules and regulations adopted
24 thereunder;
- 25 (23) to sell or offer or expose for sale liquefied petroleum gas in
26 packages or containers which do not bear a statement as to tare and net
27 weight as required by chapter 83 of the Kansas Statutes Annotated, and
28 amendments thereto or any rules and regulations adopted thereunder, or
29 packages or containers which bear a false statement as to weights;
- 30 (24) to sell, use, remove, or otherwise dispose of, or fail to remove
31 from the premises specified, any weighing or measuring device or package
32 or commodity contrary to the terms of any order issued by the secretary;
- 33 (25) to violate any order issued by the secretary pursuant to chapter
34 83 of the Kansas Statutes Annotated, and amendments thereto; and
- 35 (26) to prohibit a buyer or seller from observing the weighing or
36 operation of any transaction to which such buyer or seller is a party.
- 37 (b) It shall be unlawful for any service company or technical repre-
38 sentative to:
- 39 (1) ~~Act~~ *Perform services* as or represent such person's self to be a
40 technical representative without ~~having a~~ *benefit of a current* valid license
41 issued by the Kansas department of agriculture;
- 42 (2) *perform services as or represent such person's self or company to*
43 *be a licensed service company without benefit of a current, valid license*

1 *issued by the Kansas department of agriculture;*
2 ~~(2)~~ (3) certify a device as correct unless the device meets the toler-
3 ances and specifications as required by chapter 83 of the Kansas Statutes
4 Annotated, and amendments thereto, or any rules and regulations
5 adopted thereunder;
6 ~~(3)~~ (4) hinder or obstruct in any way the secretary in the performance
7 of the secretary's official duties under chapter 83 of the Kansas Statutes
8 Annotated, and amendments thereto or any rules and regulations adopted
9 thereunder;
10 ~~(4)~~ (5) fail to follow the standards and requirements set forth in
11 K.S.A. 83-202, and amendments thereto, or any rules and regulations
12 adopted thereunder;
13 ~~(5)~~ (6) fail to complete the testing or placing-in-service report in its
14 entirety and to report the accurate description of the parts replaced, ad-
15 justed, reconditioned or work performed;
16 ~~(6)~~ (7) file a false or fraudulent service company or technical repre-
17 sentative application or reports to the secretary;
18 ~~(7)~~ (8) fail to pay all fees and penalties as prescribed by chapter 83
19 of the Kansas Statutes Annotated, and amendments thereto, and the rules
20 and regulations adopted thereunder;
21 ~~(8)~~ (9) fail to keep or make available for examination in an accessible
22 and legible manner or provide to the secretary in a legible manner all
23 inspection reports, test reports, and any other service or report work
24 information on any device which the service company or an agent or
25 employee performed work on and other information necessary for the
26 enforcement of chapter 83 of the Kansas Statutes Annotated, and amend-
27 ments thereto or any rules and regulations adopted thereunder; or
28 ~~(9)~~ (10) sell, offer or expose for sale a weighing or measuring device
29 intended to be used commercially, which is not traceable to a national
30 type evaluation program certificate of conformance.
31 (c) For the purpose of paragraph (a)(4), the selling and delivery of a
32 stated quantity of any commodity shall be prima facie evidence of rep-
33 resentations on the part of the seller that the quantity sold and delivered
34 was the quantity bought by the purchaser.
35 (d) Violation of this section shall be deemed a deceptive act and prac-
36 tice as defined by K.S.A. 50-626, and amendments thereto. Violations of
37 the provisions of K.S.A. 83-219, and amendments thereto, may be en-
38 forced by the secretary under the administrative provisions of chapter 83
39 of the Kansas Statutes Annotated, and amendments thereto, or by the
40 attorney general or a county or district attorney under the Kansas con-
41 sumer protection act.
42 Sec. 3. K.S.A. 2008 Supp. 83-302 is hereby amended to read as fol-
43 lows: 83-302. (a) Each person, other than an authorized representative of

1 the secretary or an authorized representative of a city or county depart-
2 ment of public inspection of weights and measures established pursuant
3 to K.S.A. 83-210, and amendments thereto, desiring to operate and per-
4 form testing and other services as a company in Kansas shall apply to the
5 secretary for a service company license, on a form to be supplied by the
6 secretary, and shall obtain such license from the secretary before oper-
7 ating and performing testing or other services as a service company. Each
8 service company shall obtain a license for each place of business main-
9 tained in Kansas and shall pay a license application fee of ~~\$50, or com-~~
10 ~~mencing July 1, 2002, and ending June 30, 2010, a fee of \$100 and there-~~
11 ~~after an annual license renewal application fee of \$50, or commencing~~
12 ~~July 1, 2002, and ending June 30, 2010, a fee of \$100 for each place of~~
13 business. Each service company license shall expire on June 30 following
14 issuance, shall be void unless renewed prior to the expiration and shall
15 not be transferable.

16 (b) If any service company maintains any out-of-state places of busi-
17 ness which the company operates in serving Kansas patrons, the service
18 company seeking to obtain or renew a license under this section shall list
19 in the application such places of business and the firm names under which
20 the company operates at each such place of business. If any out-of-state
21 place of business is established by a service company after being licensed
22 under this section, the licensee shall supply such information to the sec-
23 retary before any work is performed in Kansas from such out-of-state
24 location. Each nonresident service company shall designate a resident
25 agent upon whom service of notice or process may be made to enforce
26 the provisions of chapter 83 of the Kansas Statutes Annotated, and
27 amendments thereto, or any liabilities arising from operations thereun-
28 der. Each nonresident service company which maintains no established
29 place of business in Kansas shall obtain a license under this section for
30 each out-of-state place of business and shall list on the application the
31 firm name or names for each place of business from which the service
32 company intends to operate.

33 (c) Each technical representative shall be licensed annually by the
34 secretary. Each technical representative shall be required to attend con-
35 tinuing education seminars on an annual basis as required by rules and
36 regulations adopted by the secretary and to pass a reasonable examination
37 prescribed by the secretary each year prior to being licensed. The Kansas
38 department of agriculture shall be authorized to charge a fee to the at-
39 tendees of the continuing education seminars sponsored by the agency.
40 The amount charged shall be no more than is necessary to cover the
41 expenses incurred in providing the seminar. Each technical representa-
42 tive's license shall expire on June 30 following the issuance of the license
43 and shall be void unless renewed prior to the expiration.

1 (d) No service company license may be issued or renewed under this
2 section until the applicant's weights or measures, or both have been tested
3 for accuracy and sealed by the secretary. The secretary is authorized to
4 accept a certification of the accuracy of the applicant's weights or meas-
5 ures issued by the national institute of standards and technology or by a
6 weights and measures laboratory certified by the national institute of stan-
7 dards and technology in lieu of a test by the secretary, if such certificate
8 shows that the weights or measures have been tested within the last 365
9 days preceding the license application.

10 (e) The secretary shall remit all moneys received under this section
11 to the state treasurer in accordance with the provisions of K.S.A. 75-4215,
12 and amendments thereto. Upon receipt of each such remittance, the state
13 treasurer shall deposit the entire amount in the state treasury to the credit
14 of the weights and measures fee fund.

15 Sec. 4. K.S.A. 2008 Supp. 83-402 is hereby amended to read as fol-
16 lows: 83-402. (a) Each person, other than an authorized representative of
17 the secretary or an authorized representative of a city or county depart-
18 ment of public inspection of weights and measures established pursuant
19 to K.S.A. 83-210, and amendments thereto, desiring to operate and per-
20 form testing and other services as a service company in Kansas shall apply
21 to the secretary for a service company license, on a form to be supplied
22 by the secretary, and shall obtain such license from the secretary before
23 operating and performing testing or other services as a service company.
24 Each service company shall obtain a license for each place of business
25 maintained in Kansas and shall pay a license application fee of ~~\$50, or~~
26 ~~commencing July 1, 2002, and ending June 30, 2010, a fee of \$100 and~~
27 ~~thereafter an annual license renewal application fee of \$50, or com-~~
28 ~~mencing July 1, 2002, and ending June 30, 2010, a fee of \$100 for each~~
29 ~~place of business. Each service company license shall expire on June 30~~
30 ~~following issuance, shall be void unless renewed prior to the expiration~~
31 ~~and shall not be transferable.~~

32 (b) If any service company maintains any out-of-state places of busi-
33 ness which the service company operates in serving Kansas patrons, the
34 applicant seeking to obtain or renew a license under this section shall list
35 in the application such places of business and the firm names under which
36 the service company operates at each such place of business. If any out-
37 of-state place of business is established by a service company after being
38 licensed under this section, the licensee shall supply such information to
39 the secretary before any work is performed in Kansas from such out-of-
40 state location. Each nonresident service company shall designate a resi-
41 dent agent upon whom service of notice or process may be made to
42 enforce the provisions of chapter 83 of the Kansas Statutes Annotated,
43 and amendments thereto, or any liabilities arising from operations there-

1 under. Each nonresident service company which maintains no established
2 place of business in Kansas shall obtain a license under this section for
3 each out-of-state place of business and shall list on the application the
4 firm name or names for each place of business from which the service
5 company intends to operate.

6 (c) Each technical representative shall be licensed annually by the
7 secretary. Each technical representative shall be required to attend con-
8 tinuing education seminars on an annual basis as required by rules and
9 regulations adopted by the secretary and to pass a reasonable examination
10 prescribed by the secretary each year prior to being licensed. The Kansas
11 department of agriculture shall be authorized to charge a fee to the at-
12 tendees of the seminar sponsored by the department. The amount
13 charged shall be no more than is necessary to cover the expenses incurred
14 in providing the seminar. All technical representatives who install, repair,
15 adjust or calibrate a device and certify such devices shall be required to
16 pass the state examination annually. Each technical representative license
17 shall expire on June 30 following issuance of the license and shall be void
18 unless renewed prior to the expiration.

19 (d) No service company license may be issued or renewed under this
20 section until the applicant's weights and measures have been tested for
21 accuracy and sealed by the secretary. The secretary is authorized to accept
22 a certification of the accuracy of the applicant's weights or measures is-
23 sued by the national institute of standards and technology, by a weights
24 and measures laboratory certified by the national institute of standards
25 and technology, or by the appropriate certifying agency of another state
26 in lieu of a test by the secretary, if such certificate shows that the weights
27 or measures have been tested within the 12 calendar months next pre-
28 ceding the license application.

29 (e) The secretary shall remit all moneys received under this section
30 to the state treasurer in accordance with the provisions of K.S.A. 75-4215,
31 and amendments thereto. Upon receipt of each such remittance, the state
32 treasurer shall deposit the entire amount in the state treasury to the credit
33 of the weights and measures fee fund.

34 Sec. 5. K.S.A. 2008 Supp. 83-214, 83-219, 83-302, 83-402 and 83-
35 502 are hereby repealed.

36 Sec. 6. This act shall take effect and be in force from and after its
37 publication in the statute book.