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CHAPTER 9.

 WEIGHTS AND MEASURES

**SECTION 39‑9‑10.** Short title.

This chapter is entitled the “Uniform Weights and Measures Law”.

**SECTION 39‑9‑20.** Definitions.

When used in this chapter:

(1) “Weights or measures”, or both, means all weights and measures of every kind, instruments, and devices for weighing and measuring and an appliance and accessories associated with the instruments and devices.

(2) “Weight” as used in connection with a commodity or service means net weight. It means net drained weight when a commodity is sold by drained weight.

(3) “Correct” as used in connection with weights and measures means conformance to all applicable requirements of this chapter.

(4) “Primary standards” means the physical standards of South Carolina which serve as the legal reference from which all other standards and weights and measures are derived.

(5) “Secondary standards” means the physical standards traceable to the primary standards through comparisons using acceptable laboratory procedures and used in the enforcement of weights and measures law and regulations.

(6) “Commissioner” means the Commissioner of Agriculture of South Carolina.

(7) “Person” means both plural and singular, as applicable, and includes individuals, partnerships, corporations, companies, societies, and associations.

(8) “Sale from bulk” means the sale of commodities when the quantity is determined at the time of sale.

(9)(a) Except as modified by application of the uniform packaging and labeling regulation, “package”, standard or random, means a commodity:

(i) enclosed in a container or wrapped in any manner in advance of wholesale or retail sale; or

(ii) whose weight or measure has been determined in advance of wholesale or retail sale.

(b) An individual item or lot of a commodity on which there is marked a selling price based on an established price for each unit of weight or measure is considered a package.

(10) “Net weight” means the weight of a commodity excluding materials, substances, or items not considered to be part of the commodity. Materials, substances, or items not considered to be part of the commodity include, but are not limited to, containers, conveyances, bags, wrappers, packaging materials, labels, individual piece coverings, decorative accompaniments, and coupons, except, depending on the type of service rendered, packaging materials may be considered to be part of the service. The service of shipping includes the weight of packaging materials.

(11) “Random weight” package means a package that is one of a lot, shipment, or delivery of packages of the same commodity with no fixed pattern of weights.

(12) “Standard weight” package means a package that is one of a lot, shipment, or delivery of packages of the same commodity with identical net contents declarations.

**SECTION 39‑9‑30.** Certain weighing devices shall be subject to standards and inspection.

When a fee is paid for service rendered by a weighing device, the weighing device is subject to the standards and the inspection provided by this chapter, and the person owning or operating the device is subject to its penalties.

**SECTION 39‑9‑40.** Systems of weights and measures which are recognized; definitions and tables published by National Institute of Standards and Technology shall govern.

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 one or both of these systems must be used for all commercial purposes in the State. The definitions of basic units of weights and measures, the tables of weight and measure, and weights and measures equivalents published by the National Institute of Standards and Technology are recognized and govern weighing and measuring equipment and transactions in the State.

**SECTION 39‑9‑50.** State’s primary standards; verification of secondary standards.

Weights and measures traceable to the United States prototype standards supplied by the federal government, or approved as being satisfactory by the National Institute of Standards and Technology, are the state’s primary standards of weights and measures and must be maintained in a calibration prescribed by the institute. All secondary standards may be prescribed by the Commissioner of Agriculture and must be verified upon their initial receipt and as often as considered necessary by the commissioner.

**SECTION 39‑9‑60.** Specifications, tolerances and other technical requirements for commercial, law enforcement, data gathering, and other weighing and measuring devices.

The specifications, tolerances, and other technical requirements for commercial, law enforcement, data gathering, and other weighing and measuring devices adopted by the National Conference on Weights and Measures and published in the National Institute of Standards and Technology Handbook 44, “Specifications, Tolerances, and Other Technical Requirements for Commercial Weighing and Measuring Devices”, and its supplements and revisions, apply to commercial weighing and measuring devices in the State, except as modified or rejected by regulation.

**SECTION 39‑9‑62.** Requirements for packaging and labeling of commodities.

The Uniform Packaging and Labeling Regulations adopted by the National Conference on Weights and Measures and published in the National Institute of Standards and Technology Handbook 130, “Uniform Laws and Regulations”, and its supplements and revisions, apply to packaging and labeling in the State, except as modified or rejected by regulation.

**SECTION 39‑9‑64.** Requirements for method of sale of commodities.

The Uniform Regulation for the Method of Sale of Commodities adopted by the National Conference on Weights and Measures and published in the National Institute of Standards and Technology Handbook 130, “Uniform Laws and Regulations”, and its supplements and revisions, apply to the method of sale of commodities in the State, except as modified or rejected by regulation.

**SECTION 39‑9‑65.** Requirements for registration of servicepersons and service agencies for commercial weighing and measuring devices.

The Uniform Regulation for the Voluntary Registration of Servicepersons and Service Agencies for Commercial Weighing and Measuring Devices adopted by the National Conference on Weights and Measures and published in the National Institute of Standards and Technology Handbook 130, “Uniform Laws and Regulations”, and its supplements and revisions, apply to the registration of servicepersons and service agencies in the State, except as modified or rejected by regulation.

**SECTION 39‑9‑66.** Requirements for type evaluation.

The Uniform Regulations for National Type Evaluation as adopted by the National Conference on Weights and Measures and published in the National Institute of Standards and Technology Handbook 130, “Uniform Laws and Regulations”, and its supplements and revisions, apply to type evaluation in the State, except as modified or rejected by regulation.

**SECTION 39‑9‑68.** Functions of Department of Agriculture Consumer Services Division in connection with weights and measures law.

[Section effective until July 1, 2009. See, also, section effective July 1, 2009.]

The Department of Agriculture Consumer Services Division is charged with, but is not limited to, performing the following functions in connection with weights and measures on behalf of the citizens of the State:

(1) assuring that weights and measures in commercial service within the State are suitable for their intended use, properly installed, and accurate and are so maintained by their owner or user;

(2) preventing unfair or deceptive dealing by weight or measure in a commodity or service advertised, packaged, sold, or purchased within this State;

(3) making available to all users of physical standards or weighing and measuring equipment the precision calibration and related metrological certification capabilities of the weights and measures facilities of the division;

(4) promoting uniformity, to the extent practicable and desirable, between weights and measures requirements of this State and those of other states and federal agencies;

(5) encouraging desirable economic growth while protecting the consumer through the adoption by regulation of weights and measures requirements necessary to assure equity among buyers and sellers.

**SECTION 39‑9‑68.** Functions of Department of Agriculture Consumer Services Division; fee for calibrations performed for private sector entities.

[Section effective July 1, 2009.]

The Department of Agriculture Consumer Services Division is charged with, but is not limited to, performing the following functions in connection with weights and measures on behalf of the citizens of the State:

(1) assuring that weights and measures in commercial service within the State are suitable for their intended use, properly installed, and accurate and are so maintained by their owner or user;

(2) preventing unfair or deceptive dealing by weight or measure in a commodity or service advertised, packaged, sold, or purchased within this State;

(3) making available to all users of physical standards or weighing and measuring equipment the precision calibration and related metrological certification capabilities of the weights and measures facilities of the division;

(4) promoting uniformity, to the extent practicable and desirable, between weights and measures requirements of this State and those of other states and federal agencies;

(5) encouraging desirable economic growth while protecting the consumer through the adoption by regulation of weights and measures requirements necessary to assure equity among buyers and sellers.

The Department of Agriculture shall charge a fee of forty‑five dollars an hour based on a fee schedule for all calibrations performed for private sector entities by the Metrology Laboratory authorized by subsection (3). Revenues generated by these fees shall be used by the department to offset expenses incurred in operating the Metrology Laboratory.

**SECTION 39‑9‑70.** Duties of Commissioner of Agriculture.

The Commissioner of Agriculture shall:

(1) maintain traceability of the state standards to the national standards in the possession of the National Institute of Standards and Technology;

(2) enforce this chapter;

(3) issue reasonable regulations for the enforcement of this chapter which have the force of law;

(4) establish standards of weight, measure, or count, reasonable standards of fill, and standards for the presentation of unit cost information for a packaged commodity, as necessary;

(5) grant exemptions from this chapter or regulations promulgated pursuant to it when appropriate to the maintenance of good commercial practices within the State;

(6) conduct investigations necessary to ensure compliance with this chapter;

(7) delegate to appropriate personnel any of these responsibilities necessary for the proper administration of his office;

(8) test annually the standards of weight and measure used by a municipality or county within the State and approve them when found to be correct;

(9) inspect and test weights and measures kept, offered, or exposed for sale;

(10) inspect and test to ascertain if they are correct weights and measures commercially used in:

(a) determining the weight, measure, or count of commodities or things sold, or offered or exposed for sale, on the basis of weight, measure, or count; or

(b) computing the basic charge or payment for services rendered on the basis of weight, measure, or count;

(11) test all weights and measures used in checking the receipt or disbursement of supplies in every institution for the maintenance of which funds are appropriated by the General Assembly;

(12) approve for use and may mark weights and measures found to be correct and shall reject and mark as rejected weights and measures found to be incorrect. Rejected weights and measures may be seized if not corrected within the time specified or if used or disposed of in a manner not specifically authorized. The commissioner shall condemn and may seize weights and measures found to be incorrect that are not capable of being made correct;

(13) weigh, measure, or inspect packaged commodities kept, offered, or exposed for sale, sold, or in the process of delivery to determine whether they contain the amounts represented and whether they are kept, offered, or exposed for sale in accordance with this chapter or regulations promulgated pursuant to it. In carrying out this section, the commissioner shall employ recognized sampling procedures designated in the National Institute of Standards and Technology Handbook 133, “Checking the Net Contents of Packaged Goods”.

(14) prescribe by regulation the appropriate term or unit of weight or measure to be used whenever the commissioner determines an existing practice of declaring the quantity of a commodity or setting charges for a service by weight, measure, numerical count, time, or combination, of them does not facilitate value comparisons by consumers or offers an opportunity for consumer confusion;

(15) allow reasonable variations from the stated quantity of contents which must 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;

(16) provide for the training of weights and measures personnel and also may establish minimum training and performance requirements which must be met by all weights and measures county, municipal, or state personnel. The commissioner may adopt the training standards of the National Conference on Weights and Measures National Training Program.

**SECTION 39‑9‑80.** Inspection and testing of moisture meters.

Moisture meters or other measuring devices used to determine the moisture content of grain or soybeans offered or exposed for sale must be inspected and tested within six months before November first each year and at other times determined by the Department of Agriculture in the same manner provided by law for the testing of scales by the department. The department may promulgate regulations necessary to carry out this section.

**SECTION 39‑9‑90.** Powers of Commissioner of Agriculture.

When necessary for the enforcement of this chapter or regulations promulgated pursuant to it, the commissioner may:

(1) enter commercial premises during normal business hours. If the premises are not open to the public, he first shall present his credentials and obtain consent before making entry. If entry is denied, he may apply for a search warrant from a person authorized to issue it;

(2) issue stop‑use, hold, and removal orders with respect to weights and measures commercially used and to packaged commodities or bulk commodities kept, offered, or exposed for sale;

(3) seize for use as evidence without formal warrant an incorrect or unapproved weight, measure, package, or commodity found to be used, retained, offered, or exposed for sale or sold in violation of this chapter or regulations promulgated pursuant to it;

(4) stop a commercial vehicle and after presentation of his credentials inspect the contents and require the person in charge of that vehicle to produce documents in his possession concerning the contents and proceed with the vehicle to some specified place for inspection.

**SECTION 39‑9‑100.** Powers and duties of county and municipal weights and measures officials.

Weights and measures officials appointed for a county or municipality have the duties and powers enumerated in this chapter, except duties and powers reserved to the State by law or regulation. These powers and duties extend to their respective jurisdictions, except the jurisdiction of a county official does not extend to a municipality for which a weights and measures official has been appointed. No requirement set forth by local agencies may be less stringent than or in conflict with state requirements.

**SECTION 39‑9‑110.** Selling less or taking more than quantity represented prohibited.

No person may:

(1) sell, offer, or expose for sale less than the quantity represented;

(2) take more than the represented quantity when, as buyer, he furnishes the weight or measure by means of which the quantity is determined; or

(3) represent the quantity in a manner calculated or tending to mislead or deceive another person.

**SECTION 39‑9‑120.** Misrepresentation of price prohibited; display of price including fraction of a cent.

No person may misrepresent the price of a commodity or service sold, offered, exposed, or advertised for sale by weight, measure, or count nor represent the price in any manner calculated or tending to mislead or deceive a person. Whenever an advertised, posted, or labeled price for each unit of weight, measure, or count includes a fraction of a cent, all elements of a fraction must be displayed prominently, and the numerals expressing the fraction must be immediately adjacent to, of the same general design and style as, and at least one‑half the height and width of the numerals representing the whole cent.

**SECTION 39‑9‑130.** Standard cord‑equivalent weights for pulpwood.

(A) Pulpwood sold in South Carolina by weight must be based on the following weights as standard cord equivalents:

(1) hardwood:

(a) soft hardwoods: 5,450 pounds;

(b) hard hardwoods: 6,200 pounds;

(c) mixed hardwoods: 5,800 pounds;

(2) pine: all counties: 5,350 pounds.

(B) For purposes of this section hard hardwoods include oaks, hickorys, pecans, persimmon, ironwood, locusts, holly, dogwood, chinaberrys, and cherry. Others are classified as soft hardwoods.

(C) A person violating this section, upon conviction, must be fined not more than one hundred dollars or imprisoned not more than thirty days.

**SECTION 39‑9‑140.** Measures by which commodities shall be sold.

(A) Except as otherwise provided by the Commissioner of Agriculture or by firmly established trade custom and practice, commodities:

(1) in liquid form must be sold by liquid measure or by weight;

(2) not in liquid form must be sold only by weight, measure, or count.

(B) The method of sale must provide accurate and adequate quantity information that permits the buyer to make price and quantity comparisons.

**SECTION 39‑9‑150.** Delivery ticket shall accompany certain bulk sales and bulk deliveries; information to be contained on ticket.

Bulk sales in which the buyer and seller both are not present to witness the measurement, bulk deliveries of heating fuel, other bulk sales specified by regulation of the Department of Agriculture must be accompanied by a delivery ticket containing the following information:

(1) name and address of the vendor and purchaser;

(2) date delivered;

(3) quantity delivered and the quantity upon which the price is based, if this differs from the delivered quantity including, but not limited to, temperature compensated sales;

(4) unit price unless otherwise agreed upon by the buyer and seller;

(5) identity in the most descriptive terms commercially practicable including quality representation made in connection with the sale;

(6) count of individually wrapped packages, if more than one, for commodities bought from bulk but delivered in packages.

**SECTION 39‑9‑160.** Information which shall appear on packages.

Except as otherwise provided in this chapter or by regulations promulgated pursuant to it, a random or standard package kept for the purpose of sale or offered or exposed for sale must bear on the outside of the package a definite, plain, and conspicuous declaration of:

(1) identity of the commodity in the package, unless it easily may be identified through the wrapper or container;

(2) quantity of contents in terms of weight, measure, or count;

(3) name and place of business of the manufacturer, packer, or distributor for a package kept, offered, or exposed for sale in a place other than on the premises where packed.

**SECTION 39‑9‑170.** Situation in which package shall show price per single unit of weight.

In addition to the declarations required by Section 39‑9‑160, a package being one of a lot containing random weights of the same commodity, when it is offered or exposed for sale at retail, must bear on the outside of the package a plain and conspicuous declaration of the price for each kilogram or pound and the total selling price of the package.

**SECTION 39‑9‑180.** Declaration of quantity required in advertisement stating retail price.

Whenever a packaged commodity is advertised with the retail price stated, there must be associated closely and conspicuously with the retail price a declaration of quantity as required by law or regulation to appear on the package. Where a dual declaration is required, only the declaration that sets forth the quantity in terms of the smaller unit of weight or measure must appear in the advertisement.

**SECTION 39‑9‑190.** Acts which constitute offer to sell leaf tobacco; weights and measures in tobacco auction warehouse.

When leaf tobacco is placed on the floor of a leaf tobacco warehouse in a line or row according to custom in the warehouse preceding the actual sale, this act on the part of a person, firm, or corporation must be construed as offering the tobacco for sale, and the tobacco is offered for sale.

(1) No basket, sheet, or container may be used in a tobacco auction warehouse which deviates from the established average weight by a weight in excess of one pound over or under. The average weight must be established by weighing one hundred baskets, sheets, or containers picked at random, and this weight must be divided by one hundred. The average weight must be posted on the scale or scale house in a plain and conspicuous place. Each basket, sheet, or container in the warehouse which does not conform to this requirement must be removed from the premises or destroyed by the operators of the warehouse. Each warehouse must be equipped with a metal test weight which must be equal in weight to the established and posted weight of the basket, sheet, or container. The test weight must be used by the weighmaster in making allowance for the basket, sheet, or container when setting total tare on tare beam of scale to protect himself in the issuing of weight certificates provided for in Chapter 11 of this title.

(2) Warehouse trucks must be of the same weight, and weight needed to bring about this result must be attached permanently by a bolt. The weight must be painted, stenciled, or otherwise conspicuously marked on each truck and also must be posted on the scale or scale house.

(3) If the “even pound” system is used in the buying and selling of tobacco on the warehouse floor, the nearest “even pound” on indicator, dial, or beam must be used.

(4) A tolerance not exceeding two pounds on each basket, sheet, or container of tobacco weighing not more than one hundred fifty pounds and a tolerance of four pounds on each basket, sheet, or container of tobacco weighing more than one hundred fifty pounds must be considered a reasonable variation in weight. The variation is allowable only when supported by the facts in each case and applicable to each individual basket, sheet, or container of tobacco. Allowance must not be made for variations in weight on baskets, sheets, or containers erroneously weighed or illegally packed.

(5) A buyer of leaf tobacco at auction who makes a claim for an adjusted settlement with a warehouse, based on reweighing done by a licensed weighmaster, shall present his claim in writing to the warehouseman within twenty‑four hours after the purchase of the tobacco. A warehouseman may require of the buyer that a claim for an adjusted settlement must be based upon reweights established by the weighmaster who originally weighed the tobacco on scales of tested accuracy.

**SECTION 39‑9‑200.** Unlawful acts.

No person may:

(1) use or have in possession for use in commerce an incorrect weight or measure;

(2) sell or offer for sale for use in commerce an incorrect weight or measure;

(3) remove a tag, seal, or mark from a weight or measure without specific written authorization from the proper authority;

(4) hinder or obstruct a weights and measures official in the performance of his duties;

(5) violate this chapter or regulations promulgated pursuant to it.

**SECTION 39‑9‑203.** Civil penalties; civil action to recovery penalty.

A person who by himself, by his servant or agent, or as the servant or agent of another person commits one or more of the acts enumerated in Section 39‑9‑200 may be subject to a civil penalty. A civil action may be brought by the Commissioner of Agriculture in a court of competent jurisdiction to recover a civil penalty of not less than:

(1) one hundred nor more than two hundred dollars for a first offense;

(2) two hundred fifty nor more than five hundred dollars for a second offense within two years from the date of the first offense;

(3) one thousand nor more than five thousand dollars for a third offense within two years from the date of the first offense.

**SECTION 39‑9‑206.** Administrative hearing before assessment of a civil penalty; amount of penalty.

(A) Subject to appropriate judicial review, upon a violation of this chapter, the Commissioner of Agriculture or his designee may conduct an administrative hearing and, upon notice and an opportunity to be heard, may assess a civil penalty of not less than:

(1) one hundred nor more than two hundred dollars for a first offense;

(2) two hundred fifty nor more than five hundred dollars for a second offense within two years from the date of the first offense;

(3) one thousand nor more than five thousand dollars for a third offense within two years from the date of the first offense.

(B) A civil penalty collected under this chapter must be transmitted to the State Treasurer for deposit in a fund to be used by the Department of Agriculture.

**SECTION 39‑9‑208.** Unlawful acts; criminal penalties.

(A) A person who commits one or more of the acts enumerated in Section 39‑9‑200 is guilty of a misdemeanor, and, upon a first conviction, must be fined not less than two hundred nor more than five hundred dollars or imprisoned not more than three months, or both. Upon a subsequent conviction, he must be fined not less than five hundred nor more than one thousand dollars or imprisoned not more than one year, or both.

(B) A person who performs one or more of the following acts is guilty of a felony and, upon conviction, must be fined not less than ten thousand dollars or imprisoned not more than ten years, or both:

(1) intentionally violates this chapter or regulations promulgated pursuant to it;

(2) is convicted under subsection (A) more than three times in a two‑year period;

(3) uses or has in possession a device which has been altered to facilitate fraud.

**SECTION 39‑9‑210.** Restraining orders, temporary or permanent injunctions.

The Commissioner of Agriculture may apply to a court of competent jurisdiction for a restraining order or temporary or permanent injunction restraining a person from violating this chapter.

**SECTION 39‑9‑220.** Presumption as to use of weight, measure or weighing or measuring device.

Whenever there exists a weight or measure or weighing or measuring device in or about a place in which or from which buying or selling commonly is carried on, there is a rebuttable presumption that the weight or measure or weighing or measuring device is used regularly for the business purposes of that place.

**SECTION 39‑9‑230.** Implementation of metric system; duties of Commissioner of Agriculture; advisory committee.

The Commissioner of Agriculture has general advisory authority over the implementation of the metric system in this State. To assist in the implementation there is created a nine member advisory committee including the executive officers or their designated staff member from the State Law Enforcement Division, the State Commission on Higher Education, the State Board for Technical and Comprehensive Education, the State Department of Education, the South Carolina Department of Transportation, State Department of Public Safety, the Department of Commerce, one member appointed by the Governor who is associated with the textile industry and serves without compensation, and one member appointed by the Governor from his staff. If a designated member ceases to be on the staff of the state agencies provided in this section, he no longer is a member of the advisory committee, and the executive officer shall serve or designate another member of his staff to serve on the committee. Members of the committee serve until this section and Section 39‑9‑240 have been implemented fully. The Commissioner of Agriculture, with the assistance and recommendations of the committee, shall:

(1) formulate a suggested program necessary to plan for the gradual implementation in the commerce of this State to the metric system;

(2) provide to the General Assembly recommendations for achieving conversion of units of measurement as used in this State to the metric system;

(3) encourage all state departments, divisions, agencies, boards, and commissions having authority or responsibility in matters concerning standards of weights and measurement to initiate planning for the gradual conversion to and implementation of the metric system of weights and measures of this State.

**SECTION 39‑9‑240.** Metric Education Committee.

A Metric Education Committee consisting of the Superintendent of the State Department of Education or his representative, the Chairman of the State Board for Technical and Comprehensive Education or his representative, and the Chairman of the State Commission on Higher Education or his representative shall develop and encourage implementation of a metric education plan within initial emphasis on the immediate requirements of the commercial and industrial community and a long‑range plan of public education.