

AN ACT

ENTITLED, An Act to revise certain provisions regarding the regulation of weighing and measuring devices and the regulation of service agencies of weighing and measuring devices.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 34-39-3 be amended to read as follows:

34-39-3. The Department of Public Safety may test all weighing and measuring devices used in the wholesale or retail sale of liquefied petroleum gas, either in liquid or vapor form, and shall condemn or reject for repair, any device which is found either to be inaccurate or does not clearly state the quantity of liquefied petroleum gas, either in liquid or vapor form, in pounds, gallons, cubic feet, or other unit approved by the department.

The department shall charge and collect a maximum twenty-dollar fee for each test. The fee shall be promulgated by the secretary of public safety pursuant to chapter 1-26. Revenue from the fee shall be deposited into the state general fund.

Any inspector employed by the department may enter and examine any liquefied petroleum gas plant for safety standard purposes no more than every two years, except for any reinspection resulting from a deficiency. The department shall charge and collect a maximum one hundred dollar fee for each inspection. The fee shall be promulgated by the secretary of public safety pursuant to chapter 1-26.

For the purposes of this section, a liquefied petroleum gas plant is a retail distribution facility with a capacity of at least eight thousand gallons.

Section 2. That § 34-39-4 be amended to read as follows:

34-39-4. The Division of Commercial Inspection and Licensing shall conspicuously mark all condemned or rejected for repair devices. It is a Class 2 misdemeanor to remove or deface such a mark except upon authorization of the division.

Section 3. That § 37-20-1 be amended to read as follows:

37-20-1. The weights and measures received from the United States under a resolution of Congress approved June 14, 1836, and any new weights and measures received from the United States as standard weights and measures in addition thereto or in renewal thereof, and supplied by the state in conformity therewith and certified to by the National Institute of Standards and Technology, shall be the state reference standards of weights and measures.

Section 4. That § 37-20-2 be amended to read as follows:

37-20-2. The secretary of the Department of Public Safety shall take charge of the standards adopted by this chapter as the reference standards of the state, keep the standards in a fireproof building belonging to the state from which they may not be removed except for repairs, and take all other necessary precautions for their safekeeping. The secretary shall maintain the state reference standards in good order. The secretary shall keep a complete record of the standards, balances, and other apparatus belonging to the state. The state reference standards shall be used only for testing any duplicate standards that may be required in the enforcement of chapters 37-20 to 37-22, inclusive.

Section 5. That § 37-20-3 be amended to read as follows:

37-20-3. In addition to the state reference standards of weights and measures provided for by law, the state shall supply at least one complete set of duplicate standards, kept at all times in the Division of Commercial Inspection and Licensing and known as the working standards; and such other weights, measures, and apparatus which are necessary to carry out the provisions of chapters 37-20 to 37-22, inclusive, to be known as field standards.

Section 6. That § 37-20-4 be amended to read as follows:

37-20-4. The division shall verify working standards at least once each five years and the field standards at least once each year. The working standards shall be verified by direct comparison with state reference standards, and the field standards by comparison with the working standards. If found

accurate by these tests, the field and working standards shall be sealed by stamping the letters "S. D." and the last two figures of the year on them with seals which the secretary of the Department of Public Safety has and keeps for that purpose.

Section 7. That § 37-20-5 be amended to read as follows:

37-20-5. The working standards shall be used in making all comparisons of weights and measures and weighing and measuring devices submitted for testing in the Division of Commercial Inspection and Licensing.

Section 8. That chapter 37-20 be amended by adding thereto a NEW SECTION to read as follows:

The secretary of the Department of Public Safety may promulgate rules pursuant to chapter 1-26 for the enforcement of the provisions of chapter 37-20 in the following areas:

- (1) Tolerances, specifications, and requirements for testing standards to be used in South Dakota; and
- (2) Required compliance with standards issued by the National Institute of Standards and Technology in effect January 1, 2005.

Section 9. That § 37-21-3 be repealed.

Section 10. That § 37-21-8 be repealed.

Section 11. That § 37-21-11 be repealed.

Section 12. That § 37-21-13 be amended to read as follows:

37-21-13. If the director of commercial inspection and licensing compares weights, measures, or weighing or measuring devices and finds that they correspond with the state standards, the director shall seal or mark the weights, measures, or weighing or measuring devices with appropriate seals or marks.

Section 13. That § 37-21-14 be amended to read as follows:

37-21-14. The director of commercial inspection and licensing shall condemn and seize, and may destroy, incorrect weights, measures, or weighing or measuring devices which in the director's best judgment are not susceptible to satisfactory repair. If the weights, measures, or devices are incorrect, but may be repaired, the director shall mark or tag as either "condemned for repairs" or "rejected for repairs." The owners or users of any weights, measures, or devices marked or tagged "condemned for repairs" shall have the same repaired or corrected within sixty days. The owners or users may neither use nor dispose of the same in any way, nor remove or deface any such "condemned for repairs" tag or other mark or tag affixed by the director until the device has been placed in service by a registered service agency or agent. The owner or operator of any weights, measures, or devices tagged or marked "rejected for repair" may continue to use the device but shall have the device repaired or corrected within thirty days by a registered service agency or agent. Any weights, measures, or devices which have been "condemned for repairs," or "rejected for repairs" and have not been repaired as required above, shall be confiscated by the director.

Section 14. That § 37-21-16 be amended to read as follows:

37-21-16. The director of commercial inspection and licensing may for the purposes mentioned in § 37-21-15, and in the general performance of official duties, enter and go into or upon, without formal warrant, any stand, place, building, or premises, or stop any vendor or any dealer for the purpose of making proper tests.

Section 15. That § 37-21-20 be repealed.

Section 16. That § 37-21-21 be amended to read as follows:

37-21-21. The director of commercial inspection and licensing and any deputy, assistant, or inspector may request the assistance of local law enforcement in the arrest of any violator of the statutes in relation to weights and measures, enter a complaint before any court of competent jurisdiction, and seize and use as evidence, without formal warrant, any false or unsealed weight,

measure, or weighing or measuring device or package or amount of commodities found to be used, retained, or offered or exposed for sale or sold in violation of law.

Section 17. That § 37-21-23 be repealed.

Section 18. That § 37-21A-5 be amended to read as follows:

37-21A-5. A bearer of a certificate of registration may:

- (1) Remove an official rejection or condemnation tag or mark placed on a weighing or measuring device by the authority of the Division of Commercial Inspection and Licensing;
- (2) Place in service, until such time as an official examination can be made, a weighing or measuring device that has been officially rejected or condemned; and
- (3) Place in service, until such time as an official examination can be made, a new or used weighing or measuring device.

Section 19. That § 37-21A-6 be amended to read as follows:

37-21A-6. The director shall furnish each registered serviceman and registered service agency with a supply of report forms to be known as placed in service reports. The form shall be executed in triplicate, shall include the assigned registration number, and shall be signed by a registered serviceman or by a serviceman representing a registered agency for each rejected or inoperative device restored to service and for each newly installed device placed in service. Within seven days after a device is restored to service, or placed in service, the original of the properly executed placed in service report, together with any official rejection tag removed from the device, shall be mailed to the director. The duplicate copy of the report shall be handed to the owner or operator of the device, and the triplicate copy of the report shall be retained by the registered serviceman or agency.

Section 20. That § 37-21A-8 be amended to read as follows:

37-21A-8. The director may, for good cause, after careful investigation and consideration, deny,

suspend, or revoke a certificate of registration. Good cause may include any violation of a weights and measures statute, failure to submit annual calibration documentation for all weighing and measuring devices used in servicing equipment, or calculated misrepresentations with regard to a service agent's competence, equipment or reports.

Section 21. That § 37-21A-9 be repealed.

Section 22. That § 37-21A-10 be amended to read as follows:

37-21A-10. The director may enter into an informal reciprocal agreement with any other state that has voluntary registration policies similar to the policies of South Dakota. Under such agreement, the registered servicemen and the registered service agencies of any state party to the reciprocal agreement are granted full reciprocal authority, including reciprocal recognition of certification of standards and testing equipment, in any state party to the agreement if the service agency voluntarily registers in South Dakota and pays the corresponding fee.

Section 23. That § 37-21A-11 be amended to read as follows:

37-21A-11. The secretary of the Department of Public Safety shall promulgate rules pursuant to chapter 1-26 in the following areas to enforce the provisions of this chapter:

- (1) To establish the required equipment and standards registered service agencies must have in order to service and install weighing and measuring devices in South Dakota;
- (2) To establish the process by which the division may deny, suspend, or revoke a service agency or agent's registration; and
- (3) To establish requirements for service agent registration which may include creating or adopting a test which service agents must pass before registration will be granted.

Section 24. That § 37-22-3 be amended to read as follows:

37-22-3. The Division of Commercial Inspection and Licensing shall promulgate rules pursuant to chapter 1-26 for:

- (1) The installation, testing, and maintenance of all heavy scales, including specifications in conformance with standards published by the National Institute for Standards and Technology in effect January 1, 2005;
- (2) The frequency of inspection of such scales; and
- (3) The schedule and procedure for the correction of any deficiencies.

Section 25. That § 37-22-5 be amended to read as follows:

37-22-5. The Division of Commercial Inspection and Licensing may appoint suitable and competent inspectors to aid the division in making inspections of scales under its jurisdiction.

Section 26. That § 37-22-6 be repealed.

Section 27. That § 37-22-8 be repealed.

Section 28. That § 37-22-13 be amended to read as follows:

37-22-13. If the person making an inspection pursuant to § 37-22-9 finds any scales in use in such place inaccurate, the inspector shall condemn, or reject for repair, the scales and attach thereto a card, notice, or other device, indicating that the scales are condemned or rejected. It is a Class 2 misdemeanor for any person to remove, deface, or destroy such card, notice, or other device placed upon condemned or rejected scales. Scales tagged as "condemned for repairs" shall be repaired or corrected within sixty days, and they may not be used for any purpose until they have been repaired, retested, found to be correct, and are placed in service by a registered service agency or agent or until the Division of Commercial Inspection and Licensing shall consent to the further use of such scales. The owner or operator of any weighing device tagged or marked "rejected for repair" may continue to use the device but shall have the device repaired or corrected within thirty days by a registered service agency or agent.

Section 29. That chapter 37-22 be amended by adding thereto a NEW SECTION to read as follows:

The director of the Division of Commercial Inspection and Licensing may grant a variance, upon request from a scale owner or operator, to any rules or specifications governing the scale except those specifying a tolerance or the value of a minimum division. The owner or operator shall demonstrate the variance is needed due to economic unfeasibility or impossibility of conformance with specifications. The variance shall be consistent with good commercial practices in South Dakota and, under normal circumstances, the weighing equipment shall remain accurate and reliable and the variance may not harm the owner, operator, or customers. The secretary of the Department of Public Safety shall, pursuant to chapter 1-26, promulgate rules for the application process and criteria to be used in granting or rejecting a variance.

An Act to revise certain provisions regarding the regulation of weighing and measuring devices and the regulation of service agencies of weighing and measuring devices.

=====

I certify that the attached Act  
originated in the  
  
SENATE as Bill No. 40

\_\_\_\_\_  
Secretary of the Senate  
=====

\_\_\_\_\_  
President of the Senate

Attest:

\_\_\_\_\_  
Secretary of the Senate

\_\_\_\_\_  
Speaker of the House

Attest:

\_\_\_\_\_  
Chief Clerk

Senate Bill No. 40  
File No. \_\_\_\_\_  
Chapter No. \_\_\_\_\_

=====

Received at this Executive Office  
this \_\_\_\_\_ day of \_\_\_\_\_ ,  
  
20\_\_\_\_ at \_\_\_\_\_ M.

By \_\_\_\_\_  
for the Governor  
=====

The attached Act is hereby  
approved this \_\_\_\_\_ day of  
\_\_\_\_\_, A.D., 20\_\_\_\_

\_\_\_\_\_  
Governor

=====

STATE OF SOUTH DAKOTA,  
ss.  
Office of the Secretary of State

Filed \_\_\_\_\_, 20\_\_\_\_  
at \_\_\_\_\_ o'clock \_\_ M.

\_\_\_\_\_  
Secretary of State

By \_\_\_\_\_  
Asst. Secretary of State