

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #6

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE.**

AGENCY: West Virginia Division of Labor TITLE NUMBER: 42

AMENDMENT TO AN EXISTING RULE: YES , NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 22

TITLE OF RULE BEING PROPOSED: Regulation of Trade, Weights and
Measures

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) SB-112

SECTION 64-10-1(a), PASSED ON March 11, 1995

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON
THE FOLLOWING DATE: April 1, 1995


AUTHORIZED SIGNATURE

540



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Charleston, WV 25305-0770

March 27, 1995

Andy Brown
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Charleston, WV 25305

SB 112 authorizing, Title 42, Series 22, Regulation of Trade, Weights and Measures, passed the Legislature on March 11, 1995. It is was signed by the Governor on March 23, 1995.

You have sixty (60) days after the Governor signs SB 112, to final file the legislative rule with the Secretary of State's office. To final file your legislative rule, fill in the blanks on the enclosed form #6, the "Final Filing" form and file the form with our office with a promulgation history of the rule. Authorization for your legislative rule is cited in SB 112 section 64-10-1(a). The agency may set the effective date of the legislative rule up to ninety (90) days from the date the legislative rule is final filed with the Secretary of State's office. Please have an authorized signature on the bottom line.

*****IMPORTANT: YOUR AGENCY MUST SUBMIT A CLEAN COPY OF THE LEGISLATIVE RULE ON DISK, WITH ALL UNDERLINING, STRIKE-THROUGHS AND HEADERS/FOOTERS TAKEN OUT, TO OUR OFFICE WHEN FINAL FILING THE RULE. THE DISK MUST BE ON A WORD PERFECT (5.1 OR 5.2 VERSION) OR WORD PERFECT COMPATIBLE COMPUTER SYSTEM 3 1/2" DOUBLE DENSITY DISK. STATE ON THE DISK THE FORMAT THE RULE IS IN AND THE TITLE IT IS FILED UNDER. THIS WILL ENABLE US TO ENTER YOUR RULES ON THE LEGISLATIVE DATA BASE. REMEMBER THE TEXT OF THE COMPUTER FILED RULE MUST BE IDENTICAL - WORD FOR WORD, COMMA FOR COMMA, WITH ALL UNDERLINING, STRIKE-THROUGHS AND HEADERS/FOOTERS TAKEN OUT, AS THE HARD COPY AUTHORIZED BY THE LEGISLATURE.**

After the final rule is entered into the legislative data base, the rule will be sent to the agency for review and proofing. Following confirmation or corrections, as the case may be, the Secretary of State shall submit to the agency a final version of the rule for their records.

If you have any questions or need any assistance, please do not hesitate to call our office.

Thank You
Administrative Law Division

SUMMARY OF RULE

The following is a summary of the provisions of this rule. The rule is relatively short, therefore, each aspect is summarized.

\$42-22-3. Definitions. The Uniform Code as adopted by SB #360, is a national "model law". Therefore, it contains some generic terms and their definitions. It is necessary that these terms be made West Virginia specific. The term "department" must be defined as the WV Division of Labor and the term "director" must be defined as the Commissioner of Labor.

Within the Code, there are provisions that regulate the sale or transfer of commercial weighing and measuring devices. These devices must conform to certain standards of performance to be sold or transferred. Therefore, it is necessary to make certain that pre-owned devices meet the performance standards. This compliance enforcement requires a line to be drawn between the terms "repaired" and "remanufactured". Definitions are offered which will make this distinction.

\$42-22-4. Uniform Regulation for National Type Evaluation. This provision of the Uniform Code requires that all weighing and measuring devices in commercial use must meet certain national standards and hold a certificate of conformance as issued by the National Institute of Standards and Technology. This requirement became effective on March 31, 1994, with the passage of SB #360. The purpose of Section 4 of this rule is to establish a "grandfather" or phase-in period for the West Virginia business community.

\$42-22-5. Uniform Regulation of the Voluntary Registration of Servicepersons and Service Agencies for Commercial Weighing and Measuring Devices. This aspect of the Uniform Code establishes a "voluntary" registration program for persons who specialize in the repair and remanufacture of weighing and measuring devices. An individual qualified under this registration process would have limited powers similar to those of a state inspector. The purpose of Section 5 of this rule is to require that minimum qualifications be required and that all applicants be knowledgeable concerning West Virginia Code.

\$42-22-6. Uniform Regulation for Motor Fuels. The Uniform Code as adopted by SB #360 details testing procedures for motor fuel but only makes recommendations as to acceptable test result levels. Sections 6.1 and 6.2 adopt two of the recommended publications into WV Code.

FISCAL NOTE

This rule seeks to enhance the operational and administrative procedures applicable to WV Code §47-1, Regulation of Trade, Weights and Measures (SB #360) as passed by the 1994 Regular Legislative Session. SB #360 was a complete re-write of the Code which has been in existence since the turn of the century. This rule, in itself, will neither add nor subtract responsibility, and therefore, it will have no fiscal impact. For this reason, no fiscal note is submitted.

TITLE 42
LEGISLATIVE RULE
WEST VIRGINIA DIVISION OF LABOR

SERIES 22
REGULATION OF TRADE
WEIGHTS AND MEASURES

\$42-22-1. GENERAL.

1.1. Scope. This rule governs the enforcement of WV Code \$47-1-1, et seq, Regulation of Trade, Weights and Measures as it relates only to the definition of terms, Uniform Regulation for National Type Evaluation, uniform regulation of the voluntary registration of servicepersons and service agencies for commercial weighing and measuring devices, and uniform regulation for motor fuel.

1.2. Authority. -- WV Code \$47-1-3(c).

1.3. Filing Date. --

1.4. Effective Date. --

\$42-22-2. APPLICATION AND ENFORCEMENT.

2.1. Application. This legislative rule applies to the West Virginia Division of Labor and all persons, materials and transactions governed by or otherwise within the jurisdiction of the Division.

2.2. Enforcement. The enforcement of this legislative rule is vested with the West Virginia Division of Labor.

\$42-22-3. DEFINITIONS.

3.1. The term "Department" means the West Virginia Division of Labor.

3.2. The term "Director" means the Commissioner of the West Virginia Division of Labor.

3.3. The term "remanufactured devices" means the overhaul, or replacement of parts to a weighing or measuring device which enable a device to be sold to a new owner, in a new location.

3.4. The term "repaired devices" means the maintenance or replacement of parts for a device where ownership remains the same.

§42-22-4. UNIFORM REGULATION FOR NATIONAL TYPE EVALUATION.

4.1. All new weighing and measuring devices placed into commercial service in West Virginia after March 31, 1994, must have a National Type Evaluation Program (NTEP) Certificate of Conformance as required by the National Institute of Standards and Technology (NIST) Handbook 130.

4.2. All weighing and measuring devices, in commercial use in West Virginia prior to March 31, 1994, are not required to have an NTEP Certificate of Conformance, provided:

- (a) The device meets or exceeds all applicable requirements of NIST Handbook 44;
- (b) The device is suitable for its intended use;
- (c) The device is registered with the Weights and Measures Section of the West Virginia Division of Labor under the provisions of WV Code §47-1-21; and
- (d) The device remains the property of the original registered owner and/or in the original registered location.

4.3. Effective January 1, 1996, "remanufactured devices" are required to have an NTEP Certificate of Conformance. Remanufactured devices with an original manufacture date prior to March 31, 1994, may be sold for commercial use until January 1, 1996, provided:

- (a) The device meets or exceeds all applicable requirements of NIST Handbook 44;
- (b) The device is suitable for its intended use; and
- (c) Sellers of the devices make a statement on the bill of sale to the buyer that the device is capable of being approved by the Weights and Measures Section of the West Virginia Division of Labor if properly installed.

4.4. Where replacement components are used to repair or modify a commercial weighing or measuring device, which affect the metrological integrity of the device, the components used must have an NTEP Certificate of Conformance, provided that the repair of the device does not require the original manufacturers parts, where NTEP approval is either not required or not applicable.

4.5. Where repair or modification of devices with an NTEP Certificate of Conformance alters the device to deviate from the original Certificate of Conformance, the original Certificate is invalid, and the device must be resubmitted for a new NTEP

Certificate of Conformance.

\$42-22-5. UNIFORM REGULATION OF THE VOLUNTARY REGISTRATION OF SERVICEPERSONS AND SERVICE AGENCIES FOR COMMERCIAL WEIGHING AND MEASURING DEVICES.

5.1. The Commissioner shall establish minimum qualifications with regards to, but not limited to, training and experience for service agencies and service persons, and establish testing relative to West Virginia Code §47-1-1, et seq, REGULATION OF TRADE, WEIGHTS AND MEASURES, and REGULATION OF TRADE, WEIGHTS AND MEASURES 42 CSR 22. Further, the Commissioner may require remedial or continuing education as considered necessary to maintain minimum levels of competency.

\$42-22-6. UNIFORM REGULATION FOR MOTOR FUEL.

6.1. As standards and specifications for testing of heating and fuel oils, there is hereby adopted the American Society for Testing and Materials (ASTM) Publication D-396, and associated ASTM references listed in Section 2 of ASTM D-396.

6.2. Test results which are in error exceeding the reproducibility limits for that value in the applicable ASTM publication, will be considered to be in violation of West Virginia Code §47-1-11, Requirements For Motor Fuel.

\$42-22-7. SEVERABILITY.

7.1. If any provision of this rule or its application to any person is held invalid, the invalidity shall not affect the provisions or application of the rule which can be given effect without the invalid provisions or application, and to this end, the provisions of this rule are declared to be severable.

112-

SENATE BILL NO. 112

(By Senators Manchin, Anderson, Bailey, Grubb and MacNaughtan)

[Introduced January 20, 1995; referred to the Committee on ~~Kabir~~; and then to the Committee on the Judiciary]

42-22

9

10 A BILL to amend chapter sixty-four of the code of West Virginia,
11 one thousand nine hundred thirty-one, as amended, by adding
12 thereto a new article, designated article three-a, relating
13 to authorizing the division of labor to promulgate
14 legislative rules relating to the regulation of trade,
15 weights and measures.

16 Be it enacted by the Legislature of West Virginia:

17 That chapter sixty-four of the code of West Virginia, one
18 thousand nine hundred thirty-one, as amended, be amended by
19 adding thereto a new article, designated article three-a, to read
20 as follows:

21 ARTICLE 3A. AUTHORIZATION FOR BUREAU OF COMMERCE TO PROMULGATE
22 LEGISLATIVE RULES.

23 §64-3A-1. Division of labor.

1 The legislative rules filed in the state register on the
2 fifteenth day of August, one thousand nine hundred ninety-four,
3 modified by the division of labor to meet the objections of the
4 legislative rule-making review committee and refiled in the state
5 register on the third day of November, one thousand nine hundred
6 ninety-four, relating to the division of labor (regulation of
7 trade, weights and measures), are authorized.

8

9 NOTE: The purpose of this bill is to authorize the Division
10 of Labor to promulgate legislative rules relating to the
11 regulation of trade, weights and measures.

12

13 This section is new; therefore, strike-throughs and
14 underscoring have been omitted.

42-22

Bill-Labor, Trade

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H. B. 2177

(By Delegates Gallagher, Douglas, Compton,
Linch, Faircloth and Riggs)
(Introduced January 23, 1995; referred to the
Committee on Government Organization then the Judiciary.)

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