

REFERENCE TITLE: **weights and measures; penalties; appropriation**

State of Arizona
Senate
Fifty-sixth Legislature
First Regular Session
2023

SB 1664

Introduced by
Senators Miranda: Hatathlie

AN ACT

**AMENDING SECTIONS 3-3414 AND 3-3475, ARIZONA REVISED STATUTES;
APPROPRIATING MONIES; RELATING TO THE WEIGHTS AND MEASURES SERVICES
DIVISION.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 3-3414, Arizona Revised Statutes, is amended to
3 read:

4 3-3414. Powers and duties; definition

5 A. The division shall:

6 1. Maintain custody of the state reference standards of weights and
7 measures that are traceable to the United States prototype standards and
8 that are supplied to the states by the federal government or that are
9 otherwise approved as being satisfactory by the national institute of
10 standards and technology.

11 2. Keep the state reference standards in a safe and suitable place
12 in the metrology laboratory of the division and ensure that they are not
13 removed from the laboratory except for repairs or for calibration as may
14 be prescribed by the national institute of standards and technology.

15 3. Keep accurate records of all standards and equipment.

16 4. Adopt any rules necessary to carry out this chapter and adopt
17 reasonable rules for the enforcement of this chapter. These rules have
18 the force and effect of law and shall be adopted pursuant to title 41,
19 chapter 6. In adopting these rules, the associate director shall
20 consider, as far as is practicable, the requirements established by other
21 states and by authority of the United States, except that rules shall not
22 be made in conflict with this chapter.

23 5. Publish rules adopted pursuant to this chapter and issue
24 appropriate copies at no cost to all new applicants for licensure and
25 certification. Updated copies of the rules shall be distributed, on
26 request, at no cost to the public.

27 6. Investigate complaints made to the division concerning
28 violations of this chapter and, on its own initiative, conduct
29 investigations it deems appropriate to develop information relating to
30 prevailing procedures in commercial quantity determination and relating to
31 possible violations of this chapter, in order to educate the public and
32 regulated persons to encourage and promote the general objective of
33 accuracy in the determination and representation of quantity in commercial
34 transactions.

35 7. Establish labeling standards, establish standards of weight,
36 measure or count and establish reasonable standards of fill for any
37 packaged commodity, and may establish standards for open dating
38 information.

39 8. Grant, pursuant to this chapter, exemptions from the licensing
40 provisions of this chapter for weighing and measuring instruments,
41 standards or devices when the ownership or use of the instrument or device
42 is limited to federal, state or local government agencies in the
43 performance of official functions. On request, the division may conduct
44 inspections of instruments, standards or devices and shall charge a fee
45 pursuant to section 3-3452.

1 9. Delegate to appropriate personnel any of the responsibilities of
2 the associate director for the proper administration of this chapter.

3 10. Inspect and test weights and measures that are kept, offered or
4 exposed for sale.

5 11. Inspect and test, to ascertain if they are correct, weights and
6 measures that are commercially used either:

7 (a) In determining the weight, measure or count of commodities or
8 things sold, or offered or exposed for sale, on the basis of weight,
9 measure or count.

10 (b) In computing the basic charge or payment for services rendered
11 on the basis of weight, measure or count.

12 12. Test, at random, commodities, weights and measures that are
13 used in public institutions for which monies are appropriated by the
14 legislature. The testing of commodities, weights and measures in public
15 institutions includes items:

16 (a) That have historically been of short weight, measure or count.

17 (b) That have been found to be of short weight, measure or count by
18 other jurisdictions.

19 (c) That are to be tested as part of a regional or national survey.

20 13. Test, approve for use and affix a seal of approval for use on
21 all weights, measures and commercial devices that are manufactured in or
22 brought into this state as it finds to be correct and shall reject and
23 mark as rejected weights, measures and devices that it finds to be
24 incorrect. Weights, measures and devices that have been rejected may be
25 seized by the division if not corrected within the time specified or if
26 used or disposed of in a manner not specifically authorized. The division
27 shall condemn and may seize weights, measures and devices that are found
28 to be incorrect and that are not capable of being made correct. The
29 division may affix a nontampering seal to commercial devices that are
30 tested and found to be within applicable tolerance.

31 14. Sample and test motor fuel that is stored, sold or exposed or
32 offered for sale or that is stored for use by a fleet owner to determine
33 whether the motor fuel meets the standards for motor fuel set forth in
34 section 3-3433 and article 6 of this chapter and in any rule adopted by
35 the associate director pursuant to this chapter.

36 15. Randomly witness tests on all mandated vapor recovery systems
37 that are installed or operated in this state and, if the systems are
38 determined to be in compliance with the law, approve those systems for use
39 and reject, mark as rejected and stop the use of those systems that are
40 determined not to be in compliance with the law.

41 16. **AT LEAST EVERY TWO YEARS**, inspect facilities at which motor
42 fuel is stored, sold or exposed or offered for sale to determine whether
43 dispensing devices are properly labeled.

44 17. Publish and distribute to consumers and regulated persons
45 weighing and measuring information.

1 18. Weigh, measure or inspect commodities that are kept, offered or
2 exposed for sale, sold or in the process of delivery to determine whether
3 they contain the amounts represented and whether they are kept, offered or
4 exposed for sale in accordance with this chapter or rules adopted pursuant
5 to this chapter. In carrying out this section, the associate director
6 shall employ recognized sampling procedures, such as are designated in
7 appropriate national institute of standards and technology handbooks and
8 supplements to those handbooks, except as modified or rejected by rule.

9 19. Allow reasonable variations from the stated quantity of
10 contents only after a commodity has entered intrastate commerce. These
11 variations shall include those caused by loss or gain of moisture during
12 the course of good distribution practice or by unavoidable deviations in
13 good manufacturing practice.

14 20. Prescribe the standards of weight and measure and additional
15 equipment methods of test and inspection to be employed in the enforcement
16 of this chapter. The associate director may prescribe or provide the
17 official test and inspection forms to be used in the enforcement of this
18 chapter.

19 21. Apply to any court of competent jurisdiction for a temporary or
20 permanent injunction restraining any person from violating this chapter.

21 22. Subject to title 41, chapter 4, article 4, employ such
22 personnel as needed to assist in administering this chapter.

23 23. Ensure that any information that is required to be filed with
24 the division, that relates to the contents of motor fuels that are sold in
25 this state and that is a trade secret as defined in section 49-201 is not
26 disclosed.

27 24. Establish by rule labeling standards for tanks and containers
28 of motor fuels.

29 B. The associate director may provide for the periodic examination
30 and inspection of metering devices, including devices used to measure
31 usage of electricity, natural gas or water by a consumer. Examination and
32 inspection authority shall not apply to metering devices owned by federal,
33 state or local government agencies unless requested by the government
34 agency that owns the metering devices.

35 C. The associate director may establish standards for the
36 presentation of cost-per-unit information. This subsection does not
37 mandate the use of cost-per-unit information in connection with the sale
38 of any standard packed commodity.

39 D. The associate director, when necessary to carry out this
40 chapter, may adopt and enforce rules relating to quality standards for
41 motor fuel, kerosene, oil, except used oil fuel, and hazardous waste fuel,
42 lubricating oils, lubricants, antifreeze and other liquid or gaseous
43 fuels. The associate director shall adopt rules to ensure that oxygenated
44 fuels, as described in article 6 of this chapter, that are stored, used,
45 sold or exposed or offered for use or sale are blended and stored, sold,

1 exposed or offered in such a manner as to ensure that the oxygenated fuels
2 are properly blended, that they meet the standards set forth in section
3 3-3433 and article 6 of this chapter, and in rules adopted pursuant to
4 this chapter, and that dispensers at which the oxygenated fuels are
5 dispensed are labeled as defined by rule of the division in such a manner
6 as to notify persons of the type of oxygenated fuel being dispensed and
7 the maximum percentage of oxygenate by volume contained in the oxygenated
8 fuel. The associate director of the division shall consult with the
9 director of the department of environmental quality in adopting rules
10 pursuant to this subsection.

11 E. Testing and inspection conducted pursuant to this chapter shall
12 be done, to the extent practicable, without prior notice, by a random
13 systematic method determined by the associate director or in response to a
14 complaint by the public. The testing and inspection may be done by
15 private persons and firms pursuant to contracts entered into by the
16 associate director in accordance with title 41, chapter 23 or by a
17 registered service agency or registered service representative licensed
18 pursuant to section 3-3454. The associate director shall establish
19 qualifications of persons and firms for selection for purposes of this
20 subsection. The persons or firms conducting the testing and inspection
21 shall immediately report to the division any violations of this chapter
22 and incorrect weights, measures, devices, vapor recovery systems or vapor
23 recovery components for investigation and enforcement by the division. A
24 person or firm that tests or inspects a weight, measure, device, vapor
25 recovery system or vapor recovery component that is rejected shall not
26 correct the defect causing the rejection without the permission of the
27 division.

28 F. During the course of an investigation or an enforcement action
29 by the division, information regarding the complainant is confidential and
30 is exempt from title 39, chapter 1, unless the complainant authorizes the
31 information to be public.

32 G. For the purposes of the labeling requirements prescribed in this
33 section, "oxygenated fuel" means a motor fuel blend containing 1.5 percent
34 or more by weight of oxygen.

35 Sec. 2. Section 3-3475, Arizona Revised Statutes, is amended to
36 read:

37 3-3475. Civil penalties; hearing

38 A. A person who violates this chapter, any rule of the division or
39 any license requirement is subject to a civil penalty ~~imposed by the~~
40 ~~associate director~~ OF \$500.

41 B. A person who violates this chapter, any rule of the division or
42 any license requirement may request an informal or formal hearing to
43 review a civil penalty imposed under this section. If the person requests
44 an informal hearing, the division may conduct the informal hearing, in
45 person or telephonically, to resolve a warning or citation. If the person

1 requests a formal hearing or the warning or citation is not resolved in
2 the informal hearing, the division shall conduct a formal hearing in
3 accordance with title 41, chapter 6, article 10. Except as prescribed in
4 subsection C of this section, the civil penalty shall not exceed ~~one~~
5 ~~thousand dollars~~ \$1,000 for each infraction nor more than ~~ten thousand~~
6 ~~dollars~~ \$10,000 for any thirty-day period at each business location, for
7 each registered service representative or for each public weighmaster,
8 provided that no person shall be assessed more than ~~fifty thousand dollars~~
9 \$50,000 per thirty-day period.

10 C. The associate director may double the maximum civil penalty if
11 any of the following applies:

12 1. A commercial device is found to be in violation with results
13 that favor the retailer at more than twice the allowable tolerance as
14 stated in national institute of standards and technology handbook 44.

15 2. A package is found to exceed the maximum allowable variation for
16 the labeled quantity allowed in national institute of standards and
17 technology handbook 133 or the average error of the lot is twice the
18 sample error limit in favor of the retailer.

19 3. A vapor recovery system reinspection fails the required tests.

20 4. A maximum civil penalty has been imposed on a retailer for a
21 price posting or price verification violation and in a reinspection, if
22 conducted within ninety days, the failure rate is ten percent or more and
23 at least one error is in favor of the retailer.

24 5. A maximum civil penalty has been imposed on a refiner, refinery,
25 pipeline, terminal, fuel transporter, registered supplier or transmix
26 processing facility for a violation of motor fuel quality standards or
27 producing a product transfer document that is incorrect, incomplete or
28 produced in any manner tending to mislead or deceive a person.

29 D. The attorney general shall bring actions to recover civil
30 penalties pursuant to this section in the superior court in the county in
31 which the violation occurred or in a county where the agency has its
32 office. All monies derived from civil penalties shall be deposited,
33 pursuant to sections 35-146 and 35-147, in the state general fund.

34 Sec. 3. Appropriation; Arizona department of agriculture;
35 motor fuel facilities inspections; exemption

36 A. The sum of \$250,000 and five FTE positions are appropriated from
37 the state general fund in fiscal year 2023-2024 to the Arizona department
38 of agriculture to inspect facilities at which motor fuel is stored, sold
39 or exposed or offered for sale to determine whether dispensing devices are
40 properly labeled.

41 B. The appropriation made in subsection A of this section is exempt
42 from the provisions of section 35-190, Arizona Revised Statutes, relating
43 to lapsing of appropriations.