

## **Chapter 81A.**

### **Weights and Measures Act of 1975.**

#### Article 1.

##### Administration of Chapter.

#### **§ 81A-1. Weights and measures program provided for.**

In order to protect the purchasers or sellers of any commodity, and to provide uniform standards of weight and uniform standards of measure throughout the State, which must be in conformity with the standards of weight and the standards of measure established by Congress, the Commissioner is hereby authorized to establish and maintain a weights and measures program as is hereinafter provided. (1927, c. 261, s. 1; 1945, c. 280, s. 1; 1975, c. 544.)

#### **§ 81A-2. Administration of these Articles.**

The provisions of this Chapter shall be administered by the Commissioner or his authorized agent. For the purpose of administering and giving effect to the provisions of this Chapter, the provisions of Handbook 44 as adopted by the National Conference on Weights and Measures, are hereby adopted except insofar as modified or rejected by the North Carolina Board of Agriculture. The North Carolina Board of Agriculture is empowered to make such further rules and regulations as may be necessary to make effective the purposes and provisions of this Chapter. Except as otherwise provided in G.S. 81A-30.1, all fees or moneys received by the Commissioner pursuant to this Chapter shall be placed in the Department of Agriculture and Consumer Services fund for the purpose of enforcing this Chapter. (1927, c. 261, s. 2; 1931, c. 150; 1943, c. 762, s. 1; 1949, c. 984; 1975, c. 544; 1997-261, s. 109; 1998-215, s. 4(b).)

#### **§ 81A-3. Systems of weights and measures.**

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 either one or both of these systems shall be used for all commercial purposes in the State. The definitions of basic units of weight and measure, the tables of weight and measure, and weights and measures equivalents as published by the National Bureau of Standards are recognized and shall govern weighing and measuring equipment and transactions in the State. (1975, c. 544.)

#### **§ 81A-4. Board of Agriculture authorized to establish standards of weights and measures for commodities having none.**

The Board of Agriculture is authorized and directed and empowered to establish standards of weights and measures for any commodity if no standard has been established by Congress or by the laws of the State of North Carolina; provided, however, that when a standard is established by Congress, or by the laws of the State of North Carolina, such standard shall supersede the standard or standards established by the Board of Agriculture. (1945, c. 280, s. 1; 1949, c. 984; 1975, c. 544.)

#### **§ 81A-5. Employment of Director of Weights and Measures and authorized agents.**

The Commissioner may employ a Director of Weights and Measures and such other employees as may be necessary in carrying out the provisions of this Chapter and he may fix and regulate their duties. All authority vested in the Commissioner by virtue of the provisions of this Chapter may

with like force and effect, be executed by such authorized agents of the Commissioner as defined in this Chapter. (1927, c. 261, ss. 3, 4; 1949, c. 984; 1975, c. 544.)

**§ 81A-6. Salaries and expenses.**

The Commissioner shall request sufficient funds for the proper administration of the duties prescribed in this Chapter. (1927, c. 261, s. 5; 1931, c. 150; 1949, c. 984; 1975, c. 544.)

**§ 81A-7. Local inspection of weights and measures.**

When any city or county appoints a local inspector of weights and measures, the appointment and regulation of his work must be pursuant to the rules and regulations of the Department of Agriculture and Consumer Services and his work shall be subject to the supervision of the Commissioner or his authorized agent. (1927, c. 261, s. 6; 1949, c. 984; 1975, c. 544; 1997-261, s. 109.)

**§ 81A-8. Standards of weights and measures.**

Weights and measures that are traceable to the U.S. Prototype Standards supplied by the United States, or approved as being satisfactory by the National Institute of Standards and Technology, shall be the State primary standards of weights and measures, and shall be maintained in such calibration as prescribed by the National Institute of Standards and Technology. All secondary standards may be prescribed by the Commissioner and shall be verified upon their initial receipt and as often thereafter as deemed necessary by the Commissioner or his authorized agent. Complete record of the standards belonging to the State shall be maintained by the Commissioner. (1927, c. 261, s. 9; 1943, c. 543; 1949, c. 984; 1975, c. 544; 1991, c. 636, s. 22.)

**§ 81A-9. Definitions.**

The following words and phrases as used in this Chapter, unless a different meaning is plainly required by the context, shall have the following meanings:

- (1) Adjustment. – "Adjustment" is an act involving the tightening or loosening, or lengthening or shortening, or movement, of any part of a weighing or measuring device, or the coordination of mechanical action of parts or electronic components with or upon each other, so as to make the weighing or measuring device give correct indications of applied weight or measure values within legal tolerance, and the correctness of indications shall be determined by test provided for under definition of the term "service" as defined in this Chapter.
- (2) Authorized Agent. – An "authorized agent" is any employee of the North Carolina Department of Agriculture and Consumer Services designated by the Commissioner to enforce any provisions of this Chapter and who is designated by an official identification card issued by the Commissioner.
- (3) Barrel. – The term "barrel," when used in connection with beer, ale, porter, and other similar fermented liquor is a unit of 31 liquid gallons; fractional parts of a barrel shall be understood to mean like fractional parts of 31 gallons.
- (4) Bulk Sale. – The term "bulk sale" is the sale of commodities when the quantity is determined at the time of sale.
- (5) Bushel. – The term "bushel" when used in connection with dry measure and standard containers is a unit of 2150.42 cubic inches, of which the dry quart and dry pint, respectively, are the one-thirty-second and one-sixty-fourth parts.

- (6) Commissioner of Agriculture. – "Commissioner" is the Commissioner of Agriculture of the State of North Carolina.
- (7) Condemned Equipment. – "Condemned equipment" is equipment that is permanently out of service.
- (8) Cord. – "Cord" when used in connection with purchases of wood is a quantity of wood consisting of any number of sticks, bolts or pieces laid parallel and together so as to form a rick or stack occupying a space four feet wide, four feet high and eight feet long, or such other dimensions that will when multiplied together equal 128 cubic feet by volume, construed as being seventy percent (70%) solid and thirty percent (30%) air space or 90 solid cubic feet.
- (9) Correct. – "Correct" is conformance to all applicable requirements of this Chapter.
- (10) Flour. – "Flour" is any finely ground product of wheat, or other grain, corn, peas, beans, seed or other substance, with or without added ingredients, intended for use as food for man.
- (11) Gallon. – "Gallon" when used in connection with liquid measure is a unit of 231 cubic inches, of which the liquid quart, liquid pint and gill are, respectively, the quarter, the one-eighth and the one-thirty-second parts.
- (12) Installation. – "Installation" is an act involving the erection, or building, or assembling of parts, or the placing or setting up of a weighing or measuring device so as to give correct indications of applied weight or measure values within legal tolerance when used for the purpose intended, and the correctness of indications shall be determined by test provided for under definition of the term "service" as defined in this Chapter.
- (13) Maintenance. – "Maintenance" is an act pursuant to the retention of a weighing or measuring device in such working condition as to give correct applied weight or measure value indications within legal tolerance when used as intended, which may involve either or both adjustment or repair before or after inaccuracy develops in fact, and the correctness of indications shall be determined by test provided for under the term "service" as defined in this Chapter.
- (14) Meal. – "Meal" is any product of grain, corn, peas, beans, seed or other substance coarsely ground, with or without added ingredients, either bolted, or unbolted, including grits and hominy, intended for use as food for man.
- (15) Package. – "Package" is any commodity put up or packaged in any manner in advance of sale in units suitable for either wholesale or retail sale.
- (16) Person. – "Person" is both plural and singular, as the case demands, and includes individuals, partnerships, corporations, companies, firms, societies, and associations.
- (17) Pound. – "Pound," used in connection with weight is the avoirdupois pound as declared by act of the United States Congress, except in those cases where it is common practice to use the "troy" pound or "apothecaries" pound, and the "ounce" is one-sixteenth part of an avoirdupois pound.
- (18) Primary Standards. – "Primary standards" are the physical standards of the State which serve as the legal reference from which all other standards, weights and measures are derived.

- (19) Rejected Equipment. – "Rejected equipment" is equipment that is incorrect, which is considered susceptible of proper repair.
- (20) Repair. – "Repair" is an act involving the replacement or mending of a broken or nonadjustable part or parts and the restoration of a weighing or measuring device to such working condition as to give correct indications of applied weight or measure values within legal tolerance when used for the purpose intended, and the correctness of indications shall be determined by test provided for under the term "service" as defined in this Chapter.
- (21) Sale or Sell. – "Sale" or "sell" is the ordinary meaning of said words and includes barter and exchange.
- (22) Scale Technician. – A "scale technician" is any person who, for hire or award, renders service involving adjustment, installation, repair, or maintenance of a scale or weighing device, either used or intended to be used in determining weight value, or values, by either physical act, instruction, or supervision.
- (23) Secondary Standards. – "Secondary standards" are the physical standards which are traceable to the primary standards through comparisons, using acceptable laboratory procedures, and used in the enforcement of weights and measures laws and regulations.
- (24) Service. – "Service" is activity involving adjustment, installation, repair, or maintenance or a combination of two or more of these activities with respect to a weighing or measuring device.
- (25) Ton. – "Ton" is a unit of 2,000 pounds, avoirdupois weight.
- (26) Weight. – "Weight" when used in connection with any commodity is net weight; provided, however, where the label declares that the product is sold by drained weight, weight means net drained weight.
- (27) Weight(s) and (or) Measure(s). – "Weight(s) and (or) measure(s)" are all weights and measures of every kind, instruments, and devices for weighing and measuring, and any appliance and accessories associated with any or all such instruments and devices. (1927, c. 261, ss. 20, 21; 1941, c. 237, s. 2; 1945, c. 280, s. 1; 1947, c. 380; 1975, c. 544; 1991, c. 636, s. 23; 1997-261, s. 7.)

**§ 81A-10. Reimbursement of expenses.**

When any manufacturer requests prototype approval of any commercial weighing or measuring device, said manufacturer shall reimburse the Department of Agriculture and Consumer Services for expenses incurred in the prototype examination of the device before final prototype approval is granted. Travel expenses shall be at the rates established by G.S. 138-6 or any law enacted in substitution therefor. (1981, c. 495, s. 1; 1997-261, s. 109.)

**§ 81A-11: Repealed by Session Laws 2005-276, s. 42.1(h), effective September 1, 2005.**

**§ 81A-12. Fee schedule.**

The following fees apply to all weights that are tested and certified to meet tolerances less stringent than the American Society for Testing and Materials (ASTM) Standard E617 Class 4. This includes the National Institutes of Standards and Technology (NIST) Class F tolerance. If the weight error exceeds three-fourths of the applicable tolerance, adjustment may be required at an

additional fee equal to the normal fee. No extra fee shall be charged for the normal adjustment of a weight cart. Even if weights are rejected or condemned, fees shall be assessed for the test performed.

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| Customary    | Fee/Unit  | Metric       | Fee/Unit |
|--------------|-----------|--------------|----------|
| 0-10 lb      | \$ 5.00   | 0-5 kg       | \$ 5.00  |
| 11-100 lb    | \$ 10.00  | 6-50 kg      | \$ 10.00 |
| 101-1000 lb  | \$ 20.00  | 51-500 kg    | \$ 20.00 |
| 1001-2500 lb | \$ 30.00  | 501-1000 kg  | \$ 30.00 |
| 2501-6000 lb | \$ 50.00  | 1001-2500 kg | \$ 50.00 |
| Weight Carts | \$ 125.00 |              |          |

up to 6000 lb (includes adjustment)

(b) The following fees apply to all weights that are tested and certified to meet ASTM Standard E617 Class 4 or the International Organization of Legal Metrology (IOLM) R111 Class F2 tolerances. If the weight error exceeds three-fourths of the applicable tolerance, adjustment may be required at an additional fee equal to the normal fee. Even if weights are rejected or condemned, fees shall be assessed for the test performed.

| Customary    | Fee/Unit  | Metric       | Fee/Unit  |
|--------------|-----------|--------------|-----------|
| 0-10 lb      | \$ 10.00  | 0-5 kg       | \$ 10.00  |
| 11-100 lb    | \$ 20.00  | 6-50 kg      | \$ 20.00  |
| 101-1000 lb  | \$ 40.00  | 51-500 kg    | \$ 40.00  |
| 1001-2500 lb | \$ 60.00  | 501-1000 kg  | \$ 60.00  |
| 2501-6000 lb | \$ 100.00 | 1001-2500 kg | \$ 100.00 |

(c) The following fees apply to all weights that are calibrated. Calibration means determining actual mass and conventional mass values with an assigned uncertainty specific to the test. If necessary and considered feasible by the metrologist, adjustments to ASTM Class 1, 2, or 3 tolerances or IOLM Class E2, F1, or F2 tolerances may be made for an additional fee of two times the normal fee. Adjustments to weights of this group shall require a minimum of 10 days for weights to return to environmental equilibrium before a final calibration value can be assigned. Even if weights are rejected or condemned, fees shall be assessed for the test performed.

| Customary    | Fee/Unit  | Metric       | Fee/Unit  |
|--------------|-----------|--------------|-----------|
| 0-20 lb      | \$ 20.00  | 0-10 kg      | \$ 20.00  |
| 21-50 lb     | \$ 40.00  | 11-30 kg     | \$ 40.00  |
| 51-1000 lb   | \$ 70.00  | 31-500 kg    | \$ 70.00  |
| 1001-2500 lb | \$ 130.00 | 501-1000 kg  | \$ 130.00 |
| 2501-6000 lb | \$ 200.00 | 1001-2500 kg | \$ 200.00 |

(d) The following fees apply to all weights that are calibrated using NIST weighing designs. These weights are tested in groups (typically either a 1, 2, 3, 5 series or a 1, 2, 2, 5 series) and are subject to the minimum per series fee shown. The best uncertainty possible from the North Carolina Standards Laboratory shall be assigned to the mass values of the weights. If necessary and considered feasible by the metrologist, adjustments to ASTM Class 0, 1, 2, or 3 tolerances or IOLM Class E1, E2, F1, or F2 tolerances may be made for an additional fee of two times the normal fee. Adjustments to weights of this group shall require a minimum of 10 days for weights to return to environmental equilibrium before a final calibration value can be assigned.

| Weight Range | Fee/Unit or Series  |
|--------------|---|
| 0-1 kg       | \$30.00 each, with a minimum charge of \$90.00 (3 weights) per series |

- 2-30 kg \$50.00 each, with a minimum charge of \$150.00 (3 weights) per series
- 0-2 lb \$30.00 each, with a minimum charge of \$90.00 (3 weights) per series
- 3-50 lb \$50.00 each, with a minimum charge of \$150.00 (3 weights) per series

(e) The following fees apply to volumetric standard calibration.

Provers or Test Measures Tested By the Volume Transfer Method

| Customary  | Fee/Test Point                        | Metric         | Fee/Test Point                       |
|------------|---------------------------------------|----------------|--------------------------------------|
| 0-5 gal    | \$30.00                               | 0-20 liters    | \$30.00                              |
| Over 5 gal | Add \$0.40 per each additional gallon | Over 20 liters | Add \$0.10 per each additional liter |

Volumetric Flasks, Graduates, Provers, Slicker Plate Standards, or Test Measures Tested By the

Gravimetric Calibration Method

| Customary            | Fee/Test Point        | Metric                  | Fee/Test Point       |
|----------------------|-----------------------|-------------------------|----------------------|
| 0-100 gal set-up fee | \$50.00               | 0-500 liters set-up fee | \$50.00              |
| Calibration Fee      | Add \$2.00 per gallon | Calibration Fee         | Add \$0.50 per liter |

Small Volume Provers (SVPs) Tested By the Gravimetric Calibration Method

| Customary            | Fee/Test Point        | Metric                  | Fee/Test Point       |
|----------------------|-----------------------|-------------------------|----------------------|
| 0-100 gal set-up fee | \$100.00              | 0-500 liters set-up fee | \$100.00             |
| Calibration Fee      | Add \$2.00 per gallon | Calibration Fee         | Add \$0.50 per liter |

(f) The following fees apply to tape measures and rigid rules.

- Set-Up Fee \$40.00 per instrument
- Calibration Fee \$10.00 per calibration interval

(g) The following fees apply to liquid-in-glass and electronic thermometers.

- Set-Up Fee \$40.00 per instrument
- Calibration Fee \$20.00 per calibration point

Resistance Thermometry Coefficient

Calculation and Report \$100.00 per instrument

(h) Any special tests or weight cleaning shall be billed at the rate of seventy dollars (\$70.00) per hour prorated to the nearest tenth of an hour, with a minimum charge of thirty-five dollars (\$35.00).

(i) A minimum charge of twenty-five dollars (\$25.00) per invoice shall apply.

(j) If travel is required in connection with the performance of any of these services, the Department shall be reimbursed at the rates provided in G.S. 138-6.

(k) The Department may refuse to accept for testing any weight or measure the Department deems unsuited for its intended use.

(l) The fee for tests performed on weights or measures that will be used primarily outside of the State of North Carolina shall be twice the amounts set forth in this section. (2005-276, s. 42.1(i).)

**§ 81A-13.** Reserved for future codification purposes.

**§ 81A-14.** Reserved for future codification purposes.

## Article 2.

### Powers and Duties of Commissioner.

#### **§ 81A-15. General duties.**

The Commissioner shall:

- (1) Have and keep general supervision of commercial weighing and measuring devices offered for sale, sold or used in the State.
- (2) Upon written request from any person or educational institution in the State test or cause to be tested, or calibrate, weights, measures and weighing and measuring devices used as standards in the State.
- (3) Enforce all the provisions of this Chapter.
- (4) Conduct investigations to insure compliance with this Chapter.
- (5) Inspect and test weights and measures kept, offered, or exposed for sale.
- (6) Inspect, and test to ascertain if they are correct, weights and measures commercially used (i) in 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 (ii) in computing the basic charge or payment for services rendered on the basis of weight, measure or count.
- (7) Approve for use, and may mark, such weights and measures and weighing and measuring devices as he finds to be correct, and shall reject and mark as rejected such weights and measures as he finds incorrect. Weights and measures and weighing and measuring devices that have been rejected may be seized if not corrected within 10 days, or if used or disposed of in a manner not specifically authorized. Weights and measures found to be incorrect that are not capable of being made correct shall be condemned and may be seized by the Commissioner without any court order or other legal process.
- (8) 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 thereto. In carrying out the provisions of this section, recognized sampling procedures shall be used.
- (9) Allow reasonable variations from the stated quantity of contents, which shall 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.
- (10) Delegate to authorized agents any of these responsibilities for the proper administration of this Chapter. (1927, c. 261, s. 10; 1949, c. 984; 1975, c. 544; 1991, c. 636, s. 24.)

#### **§ 81A-16. Police powers.**

When necessary for the enforcement of this Chapter or regulations promulgated pursuant thereto the Commissioner or his authorized agent is:

- (1) Authorized to enter any commercial premises during normal business hours, except that in the event such premises are not open to the public, he shall first present his credentials and obtain consent before making entry thereto, unless a search warrant has previously been obtained.

- (2) Empowered to issue stop-use, hold, and removal orders with respect to any weights and measures commercially used, and stop-sale, hold, and removal orders with respect to any packaged commodities or bulk commodities kept, offered, or exposed for sale.
- (3) Empowered to seize, for use as evidence, without warrant or other legal writ, any incorrect or unapproved weight, measure, package, or commodity found to be used, retained, offered, or exposed for sale or sold in violation of the provisions of this Chapter or regulations promulgated pursuant thereto.
- (4) Empowered to stop any commercial vehicle wherever found in the State and, after presentment of his credentials, inspect the contents, require that the person in charge of that vehicle produce any documents in his possession concerning the contents, and require him to proceed with the vehicle to some specified place for inspection.
- (5) Authorized to arrest, without warrant, any violator of this Chapter. Such authorized agent shall proceed forthwith with such person before a magistrate or other person authorized to issue arrest warrants. (1927, c. 261, ss. 11-13; 1975, c. 544.)

**§§ 81A-17 through 81A-21. Reserved for future codification purposes.**

Article 3.

Violations.

**§ 81A-22. Misrepresentation of quantity.**

No person shall sell, offer or expose for sale less than the quantity he represents. No buyer shall take more than the quantity he represents when he furnishes the weight or measure by means of which the quantity of any commodity, thing or service is determined. (1927, c. 261, s. 19; 1945, c. 280, s. 1; 1949, c. 984; 1975, c. 544.)

**§ 81A-23. Misrepresentation of pricing.**

No person shall misrepresent the price of any 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 in any way deceive a person. (1975, c. 544.)

**§ 81A-24. Commodities to be sold by weight, measure or numerical count.**

It shall be unlawful to sell, except for immediate consumption by the purchaser, on the premises of the seller, liquid commodities in any other manner than by weight or liquid measure, or commodities not liquid in any other manner than by measure of time, by length, by volume, by weight or by numerical count. When a commodity is sold by numerical count in excess of one unit, the units which constitute said numerical count shall be uniform in size and/or weight, and be so exposed as to be readily observed by the purchaser. (1945, c. 280, s. 1; 1949, c. 973; 1975, c. 544.)

**§ 81A-25. Unlawful for package to mislead purchaser.**

It shall be unlawful to keep for the purpose of sale, offer or expose for sale, or sell, any commodity in package form when said package is so made, or formed, or filled, or wrapped, or



exposed, or marked, or labeled as to mislead or deceive the purchaser as to the quantity of its contents. (1945, c. 280, s. 1; 1975, c. 544.)

**§ 81A-26. Sale from bulk.**

(a) Whenever the quantity is determined by the seller, bulk sales in excess of twenty dollars (\$20.00) and all bulk deliveries of heating fuel shall be accompanied by a delivery ticket containing the following information:

- (1) The name and address of the vendor and the name of the purchaser,
- (2) The date delivered,
- (3) The quantity delivered and the quantity upon which the price is based, if this differs from the delivered quantity,
- (4) The identity of the commodity in the most descriptive terms commercially practicable, including any quality representation made in connection with the sale,
- (5) The count of individually wrapped packages, if more than one, and
- (6) For heating fuels which are liquids and gases, the price per gallon and any other charges associated with the delivery. This subdivision applies only to residential, retail deliveries.

(b) Any invoice corresponding to the delivery ticket required under the preceding subsection (a) shall contain the information set forth in the preceding subdivisions (a)(1) through (6), and shall also state the amount of sales tax, if any, and the grand total. This subsection does not apply to any subsequent billing when the seller has previously complied with the requirements of subsections (a) and (b) of this section.

(c) Whenever a seller quotes a price or other terms and conditions to a potential purchaser under this section, if those terms and conditions include a low, introductory price, other reduced charges, or other special conditions not representative of the prices or terms and conditions that apply to existing customers of the same type or class, the seller shall clearly and conspicuously disclose: (i) those facts, (ii) the price and terms and conditions that would on that date apply to existing customers of the same type or class as the potential purchaser, and (iii) the amount of time that the introductory or unrepresentative price or terms and conditions will remain in effect. (1975, c. 544; 1991, c. 642, s. 1; 1997-456, s. 11.)

**§ 81A-27. Information required on packages.**

Except as otherwise provided in this Chapter or by regulations promulgated pursuant thereto, any package kept for the purpose of sale or offered or exposed for sale shall bear on the outside of the package a definite, plain, and conspicuous declaration of:

- (1) The identity of the commodity in the package, unless the same can easily be identified through the wrapper or container,
- (2) The quantity of contents in terms of weight, measure, or count, and
- (3) The name and place of business of the manufacturer, packer, or distributor, in the case of any package kept, offered, or exposed for sale, or sold in any place other than on the premises where packed. (1927, c. 261, s. 16; 1945, c. 280, s. 1; 1975, c. 544.)

**§ 81A-28. Declarations of unit price on random packages.**

In addition to the declarations required by G.S. 81A-27, any package being one of a lot containing random weights of the same commodity and bearing the total selling price of the package shall bear on the outside of the package a plain and conspicuous declaration of the price per single unit of weight at the time it is offered for retail sale. (1975, c. 544.)

### **§ 81A-29. Offenses and penalties.**

Any person who violates any provision of this section or any provision of this Chapter or regulations promulgated pursuant thereto for which a specific penalty has not been prescribed shall be guilty of a Class 2 misdemeanor upon a first conviction. Upon a subsequent conviction thereof, said person shall be guilty of a Class 1 misdemeanor. No person shall:

- (1) Use or have in possession for use in commerce any incorrect weight or measure.
- (2) Remove any tag, seal, or mark from any weight or measure without specific written authorization from the Commissioner or his authorized agent.
- (3) Hinder or obstruct any weights-and-measures official in the performance of his duties.
- (4) Impersonate in any way any employee of the North Carolina Department of Agriculture and Consumer Services designated by the Commissioner to enforce any part of this Chapter.
- (5) Use in retail trade, except in the preparation of packages put up in advance of sale, a weighing or measuring device which is not so positioned so that its indications may be accurately read and the weighing or measuring operation observed from some position which may be reasonably assumed by a customer.
- (6) Manufacture, use or possess a counterfeit seal, tag, mark, certificate, label or decal representing, imitating or copying the same issued by the Commissioner under this Chapter. (1927, c. 261, ss. 14, 15, 19; 1945, c. 280, s. 1; 1949, c. 984; 1975, c. 544; 1981, c. 607, s. 1; 1993, c. 539, s. 593; 1994, Ex. Sess., c. 24, s. 14(c); 1997-261, s. 8.)

### **§ 81A-30. Injunction.**

The Commissioner or his authorized agent is authorized to apply to any court of competent jurisdiction for a temporary restraining order or a preliminary or permanent injunction restraining any person from violating any provision of this Chapter. (1975, c. 544.)

#### **§ 81A-30.1. Civil penalties.**

A civil penalty of not more than five thousand dollars (\$5,000) for each violation may be assessed by the Commissioner against any person who willfully violates this Chapter. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation. No civil penalty shall be assessed under this section unless the person has been given an opportunity for a hearing pursuant to the Administrative Procedure Act. If not paid within 30 days after the effective date of a final decision by the Commissioner, the penalty may be collected by any lawful manner for the collection of a debt.

The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1991, c. 642, s. 2; 1998-215, s. 4(a).)

### **§ 81A-31. Presumptive evidence.**

Whenever there shall exist a weight or measure or weighing or measuring device in or about any place in which or from which buying or selling is commonly carried on, there shall be a rebuttable presumption that such weight or measure or weighing or measuring device is regularly used for the business purposes of that place. (1975, c. 544.)

**§§ 81A-32 through 81A-36. Reserved for future codification purposes.**

Article 4.

Uniform Weights and Measures.

**§§ 81A-37 through 81A-40. Repealed by Session Laws 1981, c. 607, s. 2.**

**§ 81A-41. Repealed by Session Laws 1999-44, s. 1.**

**§ 81A-42. Standard weights and measures.**

Whenever any commodity named in this section shall be quoted or sold by the bushel, the bushel shall be the number of pounds stated in this section and whenever quoted or sold in subdivisions of the bushel, the number of pounds shall be the fractional part of the number of pounds as set forth herein for the bushel, and when sold by the barrel shall consist of the number of pounds constituting 3.281 bushels.

|                                 | Lbs.    |                          | Lbs.    |
|---------------------------------|---------|--------------------------|---------|
| Commodity                       | per bu. | Commodity                | per bu. |
| Alfalfa.....                    | 60      | Hemp seed.....           | 44      |
| Apples, dried.....              | 24      | Hominy.....              | 62      |
| Apple seed.....                 | 40      | Horseradish.....         | 50      |
| Barley.....                     | 48      | Land plaster.....        | 100     |
| Beans, castor.....              | 46      | Lime, unslaked.....      | 80      |
| Beans, dry lima.....            | 60      | Lime, slaked.....        | 40      |
| Beans, green in-pod lima.....   | 30      | Meal, corn, whether      |         |
| Beans, soy.....                 | 60      | bolted or unbolted.....  | 48      |
| Beef, net (per bbl.).....       | 200     | Melon, canteloupe.....   | 50      |
| Beets.....                      | 50      | Millet.....              | 50      |
| Blackberries.....               | 48      | Mustard.....             | 58      |
| Blackberries, dried.....        | 28      | Nuts, chestnuts.....     | 50      |
| Bran.....                       | 20      | Nuts, hickory, without   |         |
| Broomcorn.....                  | 44      | hulls.....               | 50      |
| Buckwheat.....                  | 50      | Nuts, walnut, without    |         |
| Cabbage.....                    | 50      | hulls.....               | 50      |
| Canary seed.....                | 60      | Oats, seed.....          | 32      |
| Carrots.....                    | 50      | Onions, button sets..... | 32      |
| Cement.....                     | 80      | Onions, top buttons..... | 28      |
| Charcoal.....                   | 22      | Onions, matured.....     | 57      |
| Cherries, with stems.....       | 56      | Osage orange seed.....   | 33      |
| Cherries, without stems.....    | 64      | Parsnips.....            | 50      |
| Clover seed, red and white..... | 60      | Peaches, matured.....    | 50      |
| Clover, Burr.....               | 8       | Peaches, dried.....      | 25      |
| Clover, German.....             | 60      | Peach seed.....          | 50      |

|  |     |   |     |
|--|-----|---|-----|
| Clover, Japan, Lespedeza.....                              | 25  | Peanuts, Spanish.....                               | 30  |
| Coal, stone.....   | 80  | Peanuts.....  | 22  |
| Coke.....  | 40  | Pears, matured.....                                 | 56  |
| Corn, shelled.....   | 56  | Pears, dried.....                                   | 26  |
| Corn, Kaffir.....  | 50  | Peas, dried field.....                              | 60  |
| Corn, pop.....   | 70  | Peas, green in hull field.....                      | 30  |
| Cotton seed.....   | 30  | Pieplant.....                                       | 50  |
| Cotton seed, Sea Island.....                               | 44  | Plums.....  | 64  |
| Cucumbers.....   | 48  | Pork net (per bbl.).....                            | 200 |
| Fish.....  | 100 | Potatoes, Irish.....                                | 56  |
| Flax seed.....   | 56  | Potatoes, sweet green.....                          | 56  |
| Grapes, with stems.....                                    | 48  | Potatoes, sweet, dry weight.....                    | 47  |
| Grapes, without stems.....                                 | 60  | Quinces, matured.....                               | 48  |
| Gooseberries.....  | 48  | Raspberries.....                                    | 48  |
| Grass seed, Bermuda.....                                   | 14  | Rice, rough.....                                    | 44  |
| Grass seed, blue.....                                      | 14  | Rye seed.....                                       | 56  |
| Grass seed, Hungarian.....                                 | 48  | Sage.....   | 4   |
| Grass seed, Johnson.....                                   | 25  | Salads, mustard, spinach,<br>turnips, and kale..... | 10  |
| Grass seed, Italian rye.....                               | 20  | Salt.....   | 50  |
| Grass seed, orchard.....                                   | 14  | Sorghum molasses (per<br>gal.).....                 | 12  |
| Grass seed, tall meadow.....<br>and fescue.....            | 24  | Sorghum seed.....                                   | 50  |
| Grass seed, all meadow.....<br>and fescue except tall..... | 14  | Strawberries.....                                   | 48  |
| Grass seed, perennial rye.....                             | 14  | Sunflower seed.....                                 | 24  |
| Grass seed, timothy.....                                   | 45  | Teosinte.....                                       | 59  |
| Grass [seed], redtop.....                                  | 14  | Tomatoes.....                                       | 56  |
| Grass seed, velvet.....                                    | 7   | Turnips.....  | 50  |
| Hair, plaster.....   | 8   | Wheat.....  | 60  |

It shall be unlawful to purchase or sell, or barter or exchange, any article named in this section on any other basis than as stated herein; provided, however, that any such articles may be sold by weight. (Code, ss. 3849, 3850; 1885, c. 26; 1905, c. 126; Rev., s. 3066; 1909, c. 555, s. 1; c. 835; 1915, c. 230, s. 1; 1917, c. 34; Ex. Sess. 1921, c. 87; 1931, c. 76; 1933, c. 523, s. 3; 1937, c. 354; 1949, c. 984; 1975, c. 544.)

**§ 81A-43. Repealed by Session Laws 1981, c. 607, s. 2.**

**§ 81A-44: Repealed by Session Laws 1999-44, s. 2.**

**§§ 81A-45 through 81A-49. Reserved for future codification purposes.**

Article 5.

Public Weighmasters.

**§ 81A-50. Repealed by Session Laws 1981, c. 607, s. 2.**

**§ 81A-50.1. Purpose.**

This Article licenses and regulates public weighmasters in order to ensure accurate quantities of products upon sale to purchasers. (1981, c. 607, s. 3.)

#### **§ 81A-51. Definitions.**

For purposes of this Article, the following words, terms and phrases are defined as follows:

- (1) "Board" means North Carolina Board of Agriculture.
- (2) "Commissioner" means the North Carolina Commissioner of Agriculture or his designated agent.
- (3) "Department" means the North Carolina Department of Agriculture and Consumer Services.
- (4) "Product" means any product, commodity or article.
- (5) "Public weighmaster" means any person who shall weigh, measure or count, or who shall ascertain from a weighing, measuring or recording device for any other person and declare the weight to be the accurate weight of the product upon which the purchase, sale or exchange is based, and receive compensation for the act.
- (6) "Weigh" means weigh, measure, count, read or record.
- (7) "Weight" means weight, measure, count, reading or recording. (1939, c. 285, s. 1; 1945, c. 1067; 1971, c. 1085, s. 1; 1975, c. 544; 1981, c. 607, s. 4; 1997-261, s. 9.)

#### **§ 81A-52. License.**

All public weighmasters shall be licensed. Any person not less than 18 years of age who wishes to be a public weighmaster shall apply to the Department on a form provided by the Department. A person operating as a public weighmaster outside of this State shall include with the person's application for licensure in this State a copy of the most recent weighing device inspection report performed by the person's local or state weights and measures officials within the 12-month period immediately preceding the date of application. The Board may adopt rules for determining the qualifications of the applicant for a license. Public weighmasters shall be licensed for a period of one year beginning the first day of July and ending on the thirtieth day of June, and a fee of nineteen dollars (\$19.00) shall be paid for each person licensed at the time of the filing of the application. (1939, c. 285, s. 2; 1949, c. 983, s. 1; 1975, c. 544; 1981, c. 607, s. 4; 1989, c. 544, s. 20; 2005-276, s. 42.1(f); 2009-87, s. 1.)

#### **§ 81A-53. Certificates of weight.**

All public weighmasters shall issue certificates of weight, measure, count, reading or recording on forms approved by the Commissioner and shall enforce the provisions of this Chapter and all rules and regulations promulgated thereunder without compensation from the State. Each certificate issued shall indicate the date on which a product is weighed, counted, read or recorded. A certificate issued by a public weighmaster shall be considered the accurate weight of a product at the time the product is put into the natural channels of trade, with the qualification that reasonable variations or tolerances shall be permitted as established by rules and regulations enacted pursuant to this Chapter. If any person questions the accuracy of the weight of any product for which a certificate has been issued, a complaint shall be made to the public weighmaster who issued the certificate or to the Commissioner before the product is moved from the city, town or community where the certificate was issued. The product shall be reweighed by the public weighmaster issuing the certificate or by the Commissioner, if the product is kept in accordance with G.S. 81A-58. If,

upon reweighing, a difference in excess of the tolerance allowed by the Chapter is found in the original weight, the cost of reweighing shall be borne by the public weighmaster responsible for issuing the faulty certificate. Otherwise, the cost shall be borne by the complainant. (1939, c. 285, s. 3; 1975, c. 544; 1981, c. 607, s. 4.)

**§ 81A-54. Official seal of the public weighmaster.**

It shall be the duty of every public weighmaster to obtain from the Department an official seal for the sum of six dollars (\$6.00), inscribed with the following words: "North Carolina Public Weighmaster" and any other design or legend the Commissioner considers necessary. The seal shall be stamped or impressed on every certificate issued pursuant to this Article. The weighers of tobacco in leaf tobacco warehouses may use, instead of the seal, their signatures in ink or other indelible substance posted in a conspicuous and accessible place in the warehouse. All seals remain the property of the State and shall be returned to the Commissioner upon termination of duties as a public weighmaster. (1939, c. 285, s. 4; 1941, c. 317, s. 1; 1975, c. 544; 1981, c. 607, s. 4; 1989, c. 544, s. 21.)

**§ 81A-55. Violations by public weighmasters; by others; penalties.**

(a) Any public weighmaster who refuses to issue a certificate as prescribed by this Article, or who issues a certificate giving a false weight, or who misrepresents the weight to any person, or who otherwise violates any provisions of this Article or the rules and regulations pursuant to this Article, may have his license revoked, suspended or terminated by the Commissioner.

(b) The following acts by other persons are also violations of this Article:

- (1) Requesting a public weighmaster to weigh a product inaccurately;
- (2) Requesting an inaccurate certificate prescribed by this Article;
- (3) Impersonating a public weighmaster;
- (4) Erasing, changing or altering any certificate issued by a public weighmaster;
- (5) Increasing or decreasing the weight of a product for the purpose of deception; or
- (6) Violating any other provision of this Article. (1939, c. 285, s. 5; 1975, c. 544; 1981, c. 607, s. 4.)

**§§ 81A-56 through 81A-57. Repealed by Session Laws 1981, c. 607, s. 2.**

**§ 81A-58. Duty of custodian of product.**

If any product is to be offered for sale, or is sold, and is weighed or measured or counted by any public weighmaster and a certificate is issued prior to sale or acceptance of the product by the purchaser, or if any product is offered for sale, sold or delivered pending the weighing, measuring or counting of the product by any public weighmaster and the issuance of a certificate, the person who is in custody of the product shall keep, protect and prevent any increase or decrease in weight in the time intervening between the weighing and the issuance of the certificate and the sale, and the time intervening between the sale and the presentation of the product to the weighmaster for weighing, measuring or counting and the issuance of a certificate. Any loss sustained in the weight of the product while in custody shall be borne by the custodian. (1939, c. 285, s. 8; 1975, c. 544; 1981, c. 607, s. 5.)

**§ 81A-59. Weighing tobacco.**

All leaf tobacco offered for sale in a leaf tobacco warehouse in North Carolina shall remain in the custody of the warehouse operator from and after the time it is weighed by the public

weighmaster until it is sold or the bid is rejected by the owner. (1945, c. 1067; 1975, c. 544; 1981, c. 607, s. 5.)

**§ 81A-60. Repealed by Session Laws 1981, c. 607, s. 2.**

**§ 81A-61. Approval of devices used.**

When making a weight determination, a public weighmaster shall use a weighing device that is of a type suitable for the weighing of the product to be weighed and that has been tested and approved for use by the Commissioner or by the public weighmaster's local or state weights and measures officials within the 12-month period immediately preceding the date of the weighing. (1939, c. 285, s. 10; 1975, c. 544; 1981, c. 607, s. 6; 2009-87, s. 2.)

**§§ 81A-62 through 81A-64. Repealed by Session Laws 1981, c. 607, s. 2.**

**§§ 81A-65 through 81A-69. Reserved for future codification purposes.**

Article 6.

Scale Technician.

**§ 81A-70. Purpose of Article.**

The purpose of this Article shall be to protect the owners and users of scales and weighing devices in their needs for scale repair and service, and to provide for scale technician registration. (1941, c. 237, s. 1; 1947, c. 380; 1975, c. 544; 1983, c. 111, s. 1.)

**§ 81A-71. Prerequisites for scale technician.**

It shall be unlawful for any scale technician to render service as a scale technician until after he or she has complied with the following requirements:

- (1) Obtained from the Department of Agriculture and Consumer Services a copy of this Article, a copy of regulations pertinent to said Article, and an application form for registration.
- (2) to (4) Repealed by Session Laws 1983, c. 111, s. 2.
- (5) Obtained a registration card or certificate from the Commissioner or his authorized agent and a model form of service certificate.
- (6) Obtained from the Department an annual certification of the standards of weight which will be used by the scale technician.

The provisions of this Article shall not apply to a full-time employee who renders service only on a scale or weighing device, or on scales or weighing devices, owned solely by his or her employer unless additional pay or compensation is received for such service. (1941, c. 237, s. 3; 1947, c. 380; 1975, c. 544; 1983, c. 111, s. 2; 1997-261, s. 10.)

**§ 81A-72. Registration; certificate of registration; annual renewal.**

The Commissioner or his authorized agent shall register any person who has complied with the requirements of this Article by making a record of receipt of application, and the issuing of a certificate or card of registration to applicant, whereupon the applicant becomes a registered scale technician and shall be known thereafter as such. Such registration shall be in effect from date of registration until July 1 next and shall be renewed on the first day of July of each year thereafter. A fee of twenty dollars (\$20.00) shall accompany each application for registration and each annual

registration renewal. (1941, c. 237, ss. 4, 5; 1943, c. 543; 1947, c. 380; 1975, c. 544; 1983, c. 111, s. 3; 2005-276, s. 42.1(g).)

**§ 81A-73. Service certificate.**

Whenever any service is rendered on any scale or weighing device used or intended to be used in this State by a scale technician, a certificate shall be issued by such scale technician who rendered said service, which shall be known as a "service certificate." The size and form of said service certificate shall be determined by the Commissioner or his authorized agent. Inclusive of other pertinent information or statements, the said certificate shall bear a statement expressed in ink or other indelible substance naming the kind of service rendered, whether adjustment, installation, repair, or maintenance, and stating that a service test as defined under the term "service" has been made, and that the service rendered is guaranteed to be as represented. The service certificate shall be made out in triplicate, with original going to the owner of such scale or weighing device or his agent, and a duplicate shall be sent to the Commissioner or his authorized agent and the triplicate copy shall be retained by the scale technician issuing such certificate. (1947, c. 380; 1975, c. 544; 1983, c. 111, s. 4.)

**§ 81A-74: Repealed by Session Laws 1983, c. 111, s. 5.**

**§ 81A-75. Scale removal.**

When a scale or weighing device is removed from the premises where located by a scale technician, the scale technician or his servant or agent shall issue a receipt for said scale or weighing device, on which shall be written in ink or other indelible substance the name and address of the owner, the name and address of receiving agent, date of receipt, anticipated date of return, name or make of scale, and such other information pertinent to its identification. The form of receipt shall be approved by the Commissioner or his authorized agent. (1947, c. 380; 1975, c. 544.)

**§ 81A-76. Control of condemned or rejected scale.**

It shall be unlawful for any owner of a scale or weighing device which has been condemned or rejected by the Commissioner or his authorized agent to either use or dispose of same in any manner other than at the direction of the Commissioner or his authorized agent; provided, however, said rejected scale or weighing device may be removed from the premises temporarily for repairs or service only. (1947, c. 380; 1975, c. 544.)

**§ 81A-77. Secondhand scale.**

It shall be unlawful for any person to sell, or offer for sale, or put into use, a secondhand or rebuilt or reconditioned scale or weighing device unless said scale shall have been tested and approved by the Commissioner or his authorized agent, or shall be accompanied by a service certificate as provided for in this Article. Said service certificate shall be retained by the purchaser or user of said scale until an inspector of weights and measures has tested and approved such secondhand scale. The said certificate shall serve as proof of the accuracy of scale at the time scale was purchased or put into service. A secondhand or rebuilt or reconditioned scale or weighing device as referred to in this section shall be considered as being a scale or weighing device in the channels of trade which does not belong to the previous user. (1947, c. 380; 1975, c. 544.)

**§ 81A-78. Scale location.**



It shall be unlawful for any scale or weighing device to be installed, set up, put into service, or used on a foundation or support that aids in giving false indication of weight values applied to platter, platform, or other load receiving element. (1947, c. 380; 1975, c. 544.)

**§ 81A-79. Exemption.**

The provisions of this Article shall not prohibit the user of a scale or weighing device from employing some person other than a scale technician to render service as defined by this Article upon his or her scale or weighing device, nor apply to the person so employed, who does not solicit such employment, provided that said user shall not be relieved of his or her responsibility or liability concerning the accuracy of the scale or weighing device after service has been rendered. (1947, c. 380; 1975, c. 544.)

**§ 81A-80. Suspension or revocation of registration; penalty.**

(a) The Commissioner may suspend or revoke the registration of any scale technician who violates any provisions of this Article or regulations adopted thereunder or who shall fail to issue a service certificate or who shall issue a service certificate bearing false statements regarding service rendered.

(b) Any person who violates any provision of this Article shall be guilty of a Class 2 misdemeanor. (1941, c. 237, s. 7; 1947, c. 380; 1949, c. 983, s. 2; 1975, c. 544; 1983, c. 111, s. 6; 1993, c. 539, s. 594; 1994, Ex. Sess., c. 24, s. 14(c).)

**§§ 81A-81 through 81A-85. Reserved for future codification purposes.**

Article 7.

General Provisions.

**§ 81A-86. Regulations to be unaffected by repeal of prior enabling statute.**

The adoption of this Chapter or any of its provisions shall not affect any regulations promulgated pursuant to the authority of any earlier enabling statute unless inconsistent with this Chapter or modified or revoked. (1975, c. 544.)

**§ 81A-87. Severability provision.**

If any provision of this Chapter is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the Chapter and the applicability thereof to other persons and circumstances shall not be affected thereby. (1975, c. 544.)

**§ 81A-88. Repeal of conflicting laws.**

All laws and parts of laws contrary to or inconsistent with the provisions of this Chapter are repealed except as to offenses committed, liabilities incurred, and claims made thereunder prior to July 1, 1976. (1975, c. 544.)