

State of South Dakota

NINETY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2016

400X0243

HOUSE BILL NO. 1031

Introduced by: The Committee on Commerce and Energy at the request of the Department
of Public Safety

1 FOR AN ACT ENTITLED, An Act to revise certain provisions pertaining to weights and
2 measures.

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

4 Section 1. That § 37-2-40 be amended to read:

5 37-2-40. If gasoline, alcohol blended fuels, kerosene, diesel fuel, aviation gasoline, burner
6 oil, or naphtha are sold, an invoice, bill of lading, shipping paper, or other documentation shall
7 accompany each delivery other than a retail sale. This document shall identify the quantity, the
8 name of the product, the particular grade of the product, the applicable automotive fuel rating,
9 and oxygenate type and content (if applicable), the name and address of the seller and buyer, and
10 the date and time of the sale. Documentation shall be retained at the retail establishment for a
11 period of not less than one year. If any retail establishment does not have the required
12 documents on site at the time an inspection is conducted, the department may charge the cost
13 of the time spent locating the documents at the set inspection rate to the establishment owner.

14 Section 2. That § 34-39-6 be amended to read:

15 34-39-6. All liquid gas meters shall be of a positive displacement type equipped with vapor



1 separator or provided with such other equipment which will positively eliminate all air and
2 vapor from passing through the meter with the liquid gas, and differential pressure regulator ~~and~~
3 ~~such meters. A liquid gas meter, except a meter dispensing at a rate of twenty gallons per minute~~
4 ~~or less, shall be corrected, prior to use, to sixty degrees Fahrenheit liquid gas temperature and~~
5 all deliveries of liquid gas through ~~such meters~~ the meter shall, ~~at the time and place of such~~
6 ~~delivery, be temperature corrected from sixty degrees Fahrenheit to the temperature of the liquid~~
7 gas at the time and place of delivery and the customer billed accordingly. It is a Class 1
8 misdemeanor to make wholesale or retail sales to customers from any bulk delivery vehicle
9 unless ~~such~~ the bulk delivery vehicle is equipped with and dispenses ~~said~~ the liquid petroleum
10 gas through a liquid gas meter ~~as herein provided. Liquid meters shall not. No liquid gas meter~~
11 may be equipped with a bypass around ~~said~~ the liquid gas meter; ~~provided, however, that.~~
12 However, the prohibition of a bypass is not intended to prohibit the use of an equalization line.

13 Section 3. That § 34-39-2 be amended to read:

14 34-39-2. It is a Class 2 misdemeanor to sell or offer for sale, either at wholesale or retail, any
15 liquefied petroleum gas, either in liquid or vapor form, except by weights and measures that are
16 approved by the ~~Division of Commercial Inspection and Licensing~~ department.

17 Section 4. That § 34-39-3 be amended to read:

18 34-39-3. The ~~Department of Public Safety~~ department may test all weighing and measuring
19 devices used in the wholesale or retail sale of liquefied petroleum gas, either in liquid or vapor
20 form, and shall condemn or reject for repair, any device which is found either to be inaccurate
21 or does not clearly state the quantity of liquefied petroleum gas, either in liquid or vapor form,
22 in pounds, gallons, cubic feet, or other unit approved by the department.

23 The department shall charge and collect a sixty-eight dollar fee for each test. ~~From July 1,~~
24 ~~2007, through June 30, 2008, the fee is thirty-six dollars. From July 1, 2008, through June 30,~~

1 ~~2009, the fee is fifty-two dollars. On July 1, 2009, and thereafter, the fee is sixty-eight dollars.~~
2 ~~Revenue from the fee shall be deposited into the state general fund.~~

3 Any inspector employed by the department may enter and examine any liquefied petroleum
4 gas plant for safety standard purposes no more than every two years, except for any reinspection
5 resulting from a deficiency. The department shall charge and collect a ninety-four dollar fee for
6 each inspection. ~~From July 1, 2007, through June 30, 2008, the fee is fifty-eight dollars. From~~
7 ~~July 1, 2008, through June 30, 2009, the fee is seventy-six dollars. On July 1, 2009, and~~
8 ~~thereafter, the fee is ninety-four dollars.~~

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

11 Revenue from the fees imposed by this section shall be deposited into the general fund. It
12 is the intent of the Legislature that one-half of the inspection program funding may be derived
13 from the general fund and the other half from the fees collected pursuant to this section and
14 §§ 37-21-9.1, 37-21A-3, 37-21A-7, and 37-22-10, through the General Appropriations Act.

15 Section 5. That § 34-39-3.1 be amended to read:

16 34-39-3.1. ~~The Division of Commercial Inspection and Licensing of the Department of~~
17 ~~Public Safety~~ department shall perform the functions ~~previously performed by the state inspector~~
18 ~~and scaler of weights and measures pursuant to~~ required by this chapter.

19 Section 6. That § 34-39-4 be amended to read:

20 34-39-4. The ~~Division of Commercial Inspection and Licensing~~ department shall
21 conspicuously mark all condemned or rejected for repair devices. It is a Class 2 misdemeanor
22 to remove or deface ~~such a~~ the mark except upon authorization of the ~~division~~ department.

23 Section 7. That § 34-39-5 be amended to read:

24 34-39-5. It is a Class 1 misdemeanor to use a weighing or measuring device for determining

1 quantities of liquefied petroleum gas, either in liquid or vapor form, which has been condemned
2 by the ~~Division of Commercial Inspection and Licensing~~ department.

3 Section 8. That § 34-39-7 be amended to read:

4 34-39-7. The ~~Division of Commercial Inspection and Licensing~~ is hereby authorized to
5 secretary may promulgate and adopt, in compliance with rules, pursuant to chapter 1-26, such
6 ~~rules and regulations and~~ to establish tolerances within a maximum of two percent plus or
7 minus, which may be necessary for the enforcement of §§ 34-39-1 to 34-39-6, inclusive.

8 Section 9. That § 37-2-5 be amended to read:

9 37-2-5. Terms used ~~throughout §§ 37-2-5 to 37-2-24, inclusive,~~ in this chapter mean:

- 10 (1) "Alcohol," a colorless volatile flammable liquid containing no more than 1.25 percent
11 of water used for the purpose of blending or mixing with gasoline for use in motor
12 vehicles and commonly known as alcohol, ethanol, or methanol;
- 13 (2) "ASTM," the American Society for Testing and Materials;
- 14 (3) "Aviation gasoline," a volatile hydrocarbon fuel free from suspended water and
15 sediment matter and that is suitable for use as a fuel in an aviation spark ignition
16 internal combustion engine designed for use in an aircraft;
- 17 (3A) "Biodiesel," a fuel comprised of mono-alkyl esters of long chain fatty acids derived
18 from vegetable oils or animal fats, designated B100, and meeting the requirements
19 of the American Society of Testing and Materials D 6751 as of January 1, ~~2005~~ 2015,
20 and is registered with the United States Environmental Protection Agency as a fuel
21 and fuel additive under section 211(b) of the Clean Air Act in effect on January 1,
22 2006;
- 23 (3B) "Biodiesel blend," a special blended fuel comprised of at least two percent by volume
24 of biodiesel blended with petroleum-based diesel fuel, designated BXX. In the

1 abbreviation BXX, the XX represents the volume percentage of biodiesel fuel in the
2 blend;

3 (4) "Department," the Department of Public Safety;

4 (5) "Diesel fuel," a refined middle distillate hydrocarbon fuel free from suspended water
5 and sediment matter that is suitable for use as a fuel in a compression-ignition
6 (diesel) internal combustion engine;

7 (5A) "Ether," methyl tertiary butyl ether;

8 (6) "Flash test" and "flash point," the flash point as determined by the method of the
9 American Society for Testing Materials, using the instrument known as the Tagliabue
10 closed cup tester;

11 (7) "Gasoline," a volatile hydrocarbon fuel free from suspended water and sediment
12 matter that is practicable and suitable used as fuel in a spark ignition internal
13 combustion engine;

14 (8) "Inspector," the secretary ~~of the Department of Public Safety~~ or any deputy or
15 assistant appointed by the secretary for the purpose of enforcing the provisions of this
16 chapter;

17 (9) "Kerosene," a hydrocarbon fuel intended for use in heating and illumination and
18 having an American Petroleum Institute gravity of not less than forty degrees.
19 Kerosene shall also include coal oil and burner oil;

20 (9A) "NIST," the National Institute of Standards and Technology;

21 (10) "Petroleum products," gasoline, alcohol blended fuels, kerosene, diesel fuel, aviation
22 gasoline, burner oil, naphtha and lubricating oils;

23 (11) "Secretary," the secretary of the Department of Public Safety.

24 Section 10. That § 37-2-6 be amended to read:

1 37-2-6. The secretary of the Department of Public Safety may, pursuant to chapter 1-26, and
2 in general conformity with ASTM and NIST standards in effect on January 1, ~~2005~~ 2015,
3 promulgate rules:

- 4 (1) Establishing standards for the maximum volume percentages of ethanol, methanol,
5 ether, and cosolvents in alcohol blended fuels;
- 6 (2) Establishing a program for and prescribing the methods to be used for the inspection
7 and testing of alcohol blended fuels, petroleum products, biodiesel, and biodiesel
8 blends;
- 9 (3) Requiring labeling of devices dispensing alcohol blended fuels, biodiesel, and
10 biodiesel blends;
- 11 (4) Establishing standards setting the specifications and tolerance requirements for
12 petroleum products, biodiesel, and biodiesel blends; and
- 13 (5) Regulating the filtering system to be used on devices dispensing alcohol blended
14 fuels.

15 Section 11. That § 37-2-7 be amended to read:

16 37-2-7. Specifications and methods for the examination and test of petroleum products shall
17 be determined by the ~~Division of Legal and Regulatory Services~~ department and shall be based
18 upon standards from the ~~American Society for Testing and Materials~~ ASTM and the ~~National~~
19 ~~Institute for Standards and Technology~~ NIST as of January 1, ~~2005~~ 2015. If promulgated as
20 rules of the ~~division~~ department in accordance with the provisions of chapter 1-26, the
21 specifications shall be the specifications for such petroleum products sold in this state and
22 official tests of the petroleum products shall be based upon test specifications so determined,
23 adopted, and promulgated.

24 Section 12. That § 37-2-8 be amended to read:

1 37-2-8. ~~The director of the State Health Laboratory, or other~~ Any qualified laboratory, shall
2 may make an analysis as ~~may be~~ requested by the secretary of the Department of Public Safety.
3 Distillation tests shall be made ~~in accordance with~~ pursuant to the methods for the tests adopted
4 by ~~the American Society for Testing and Materials~~ ASTM.

5 Section 13. That § 37-2-9 be amended to read:

6 37-2-9. The inspector ~~shall~~ is not be required to make a thorough analysis of all petroleum
7 products to ascertain ~~every~~ each form of impurity, ~~but may do so whenever, in his opinion, it~~
8 ~~may be necessary; and, if upon such.~~ However, if the inspector performs an analysis it is
9 ~~demonstrated that~~ demonstrates the requirements of this chapter are not met or that there exists
10 ~~therein some~~ an impurity or imperfection not specified in this chapter which renders ~~such a~~
11 petroleum ~~products~~ product unsuitable, ~~it shall be his duty to reject the same~~ the inspector may
12 reject the petroleum product.

13 Section 14. That § 37-2-11 be amended to read:

14 37-2-11. No person ~~shall~~ may display any sign, label, or other designating mark which
15 describes any lubricating oil or gasoline for internal combustion engines not actually sold or
16 offered for sale or delivered at the location at which the sign, label, or other designating mark
17 is displayed, ~~or.~~ No person may display any label upon any container which label names or
18 describes any lubricating oil or gasoline for internal combustion engines not actually contained
19 ~~therein in the container,~~ but offered for sale or sold as such lubricating oil or gasoline. This
20 section does not apply to any person utilizing a sign in a decorative manner. No place of
21 business may use a decorative sign in a manner that misleads a consumer as to the products sold
22 at that location.

23 Section 15. That § 37-2-24 be amended to read:

24 37-2-24. The expense of all inspections, collections, and refunds in connection with the

1 safety and taxation of all petroleum products shall be paid ~~out of~~ from the collection of taxes
2 or licenses ~~therefrom~~ by the state treasurer, upon bills, vouchers, and payrolls approved by the
3 ~~Division of Commercial Inspection and Licensing~~ department and the commissioner of finance
4 and management.

5 The allocation of funds from the net collections of taxes and licenses on all petroleum
6 products shall be made by the state treasurer ~~in the manner and in the amounts prescribed by~~
7 pursuant to law.

8 Section 16. That § 37-2-44 be amended to read:

9 37-2-44. In general conformity with ASTM D4814 and the adoption of NIST Handbook
10 130, ~~2005~~ 2015, in rules promulgated pursuant to this chapter, the minimum (R+M)/2 octane
11 rating grades of petroleum products, as defined by subdivision 37-2-5(10) in the counties of
12 Butte, Custer, Fall River, Harding, Lawrence, Meade, Oglala Lakota, Pennington, and Perkins
13 shall be no less than the following:

- 14 (1) Regular, unleaded, regular unleaded 85;
15 (2) Midgrade, plus, or super unleaded 87, 88, 89, or 90; and
16 (3) Premium, supreme, high test unleaded 91.

17 Section 17. That § 37-20-2 be amended to read:

18 37-20-2. The secretary ~~of the Department of Public Safety~~ shall take charge of the standards
19 adopted by this chapter as the reference standards of the state, ~~keep the~~ and take necessary
20 precautions for the safekeeping of the standards. The standards shall be kept in a fireproof
21 building belonging to controlled by the state from which ~~they~~ the standards may not be removed
22 except for repairs, ~~and take all other necessary precautions for their safekeeping or calibrations.~~
23 The secretary shall maintain the state reference standards in good order. The secretary shall keep
24 a complete record of the standards, balances, and other apparatus belonging to the state. The

1 state reference standards ~~shall~~ may only be used ~~only~~ for testing any duplicate standards that
2 may be required in the enforcement of chapters 37-20 to 37-22, inclusive.

3 Section 18. That § 37-20-3 be amended to read:

4 37-20-3. In addition to the state reference standards of weights and measures provided for
5 by law, the state shall supply at least one complete set of duplicate standards; which shall be
6 kept at all times in the ~~Division of Commercial Inspection and Licensing and~~ department. The
7 duplicate standard shall be known as the working standards; ~~and such~~. The other weights,
8 measures, and apparatus which are necessary to carry out the provisions of chapters 37-20 to 37-
9 22, inclusive, ~~to~~ shall be known as field standards.

10 Section 19. That § 37-20-5 be amended to read:

11 37-20-5. The working standards shall be used in making all comparisons of weights and
12 measures and weighing and measuring devices submitted for testing in the ~~Division of~~
13 ~~Commercial Inspection and Licensing~~ department.

14 Section 20. That § 37-20-34 be amended to read:

15 37-20-34. The secretary ~~of the Department of Public Safety~~ may promulgate rules, pursuant
16 to chapter 1-26, for the enforcement of the provisions of chapter 37-20 in the following areas:

- 17 (1) Tolerances, specifications, and requirements for testing standards to be used in South
18 Dakota; and
- 19 (2) Required compliance with standards issued by the National Institute of Standards and
20 Technology in effect January 1, ~~2005~~ 2015.

21 Section 21. That § 37-21-1 be amended to read:

22 37-21-1. The ~~Division of Commercial Inspection and Licensing~~ department shall have and
23 keep a general supervision of the weights, measures, and weighing or measuring devices offered
24 for sale, sold, or in use in the state.

1 Section 22. That § 37-21-1.1 be repealed.

2 ~~37-21-1.1. The Division of Commercial Inspection and Licensing of the Department of~~
3 ~~Public Safety shall perform the functions previously performed by the Department of~~
4 ~~Agriculture pursuant to this chapter and chapter 37-20.~~

5 Section 23. That § 37-21-2 be amended to read:

6 37-21-2. The secretary of the Department of Public Safety hereby made is the ex officio
7 inspector and sealer of weights and measures and is hereby charged with the duty of carrying
8 ~~into force and effect~~ shall enforce the provisions of chapters 37-20 and 37-21.

9 ~~The deputies, assistants, and inspectors, A deputy, assistant, or inspector appointed for the~~
10 ~~purpose or entrusted with such duties by the secretary, shall have~~ has the same powers and
11 duties ~~as are provided for such director to the secretary~~ when acting in performance of duties
12 assigned to them by him by the secretary under the provisions of this chapter.

13 Section 24. That § 37-21-6 be amended to read:

14 37-21-6. Regulations pursuant to § 37-21-5 may include specifications and tolerances for
15 any weight, measure, or weighing or measuring device of the character of those specified in
16 § 37-21-9. The rules shall prohibit the use of any weight, measure, or weighing or measuring
17 device which is not accurate, ~~which~~ is of ~~such~~ construction that it is not reasonably permanent
18 in its adjustment, ~~which~~ will not repeat its indications correctly, or ~~which~~ facilitates the
19 perpetration of fraud. ~~Such~~ The specifications and tolerances shall be in conformity with the
20 code of specifications, tolerances, and regulations for commercial weighing and measuring
21 devices issued and recommended by the National Institute of Standards and Technology of the
22 United States Department of Commerce and in effect on January 1, ~~2005~~ 2015.

23 Section 25. That § 37-21-9 be amended to read:

24 37-21-9. When not otherwise provided for by law, ~~the director of commercial inspection and~~

1 ~~licensing secretary shall have the power, and it shall be his duty to inspect, test, try, and~~
2 ~~ascertain if they are correct; that all weights, measures, and weighing and measuring devices~~
3 ~~kept, offered, or exposed for sale, sold or used or employed by any proprietor, agent, lessee, or~~
4 ~~employee person in proving or ascertaining the size, quantity, extent, area, or measurement of~~
5 ~~quantities, things, produce, or articles of distribution or consumption purchased or offered or~~
6 ~~submitted by such person or persons for sale, hire, or award are correct.~~

7 Section 26. That § 37-21-9.1 be amended to read:

8 37-21-9.1. The ~~Division of Commercial Inspection and Licensing~~ department shall charge
9 and collect a fee of twenty-eight dollars for each inspection and testing of any weight, measure,
10 and weighing and measuring device up to one thousand pounds. ~~From July 1, 2007, through~~
11 ~~June 30, 2008, the fee is sixteen dollars. From July 1, 2008, through June 30, 2009, the fee is~~
12 ~~twenty-two dollars. On July 1, 2009, and thereafter, the fee is twenty-eight dollars. The fee shall~~
13 ~~be paid upon demand of the ~~division~~ department by the person, firm, or corporation owning or~~
14 ~~operating the weight, measure, or weighing or measuring device inspected or tested. A fee of~~
15 ~~fourteen dollars shall be charged and collected for each inspection and testing of gasoline and~~
16 ~~diesel stationary fuel pump meters. From July 1, 2007, through June 30, 2008, the fee is eight~~
17 ~~dollars. From July 1, 2008, through June 30, 2009, the fee is eleven dollars. On July 1, 2009,~~
18 ~~and thereafter, the fee is fourteen dollars. A fee of forty-six dollars shall be charged and~~
19 ~~collected for each inspection and testing of gasoline and diesel high speed stationary fuel pump~~
20 ~~meters and for refined fuel truck meters. From July 1, 2007, through June 30, 2008, the fee is~~
21 ~~twenty-five dollars. From July 1, 2008, through June 30, 2009, the fee is thirty-six dollars. On~~
22 ~~July 1, 2009, and thereafter, the fee is forty-six dollars. If a special or emergency inspection is~~
23 ~~requested, a charge, not to exceed the actual cost of ~~such~~ the inspection, including costs for~~
24 ~~personnel, equipment, and mileage, shall be made and assessed against the requesting ~~individual~~~~

1 person or device owner.

2 It is the intent of the Legislature that one-half of the inspection program funding may be
3 derived from the general fund and the other half from the fees collected pursuant to this section
4 and §§ 34-39-3, 37-21A-3, 37-21A-7, and 37-22-10, through the General Appropriations Act.

5 Section 27. That § 37-21-10 be amended to read:

6 37-21-10. ~~Whenever~~ If a complaint shall be ~~is~~ made to the ~~director of commercial inspection~~
7 ~~and licensing~~ secretary that any false or incorrect scales, weights, or measures are being made
8 use of by any person, ~~firm, or corporation~~ in the purchase or sale of merchandise or other
9 commodities or in weighing any article or commodity, the piece price for which is determined
10 by weight or measure, ~~it shall be his duty to cause the same to be inspected~~ the secretary shall
11 investigate the complaint as soon as ~~the duties of his office will permit, and he~~ possible. The
12 secretary shall make such other inspections of the weights and measures as in ~~his~~ the secretary's
13 judgment are necessary or proper to be made, except where inspection is provided for by chapter
14 37-22 or ~~chapter~~ 37-22A.

15 Section 28. That § 37-21-12 be amended to read:

16 37-21-12. Any person who impersonates in any way the secretary ~~of the Department of~~
17 ~~Public Safety, his deputy, or inspectors, or an employee of the department~~ in the performance
18 of ~~his or their~~ the person's official duties, is guilty of a Class 1 misdemeanor.

19 Section 29. That § 37-21-13 be amended to read:

20 37-21-13. If the ~~director of commercial inspection and licensing~~ secretary compares weights,
21 measures, or weighing or measuring devices and finds that they correspond with the state
22 standards, the ~~director~~ secretary shall seal or mark the weights, measures, or weighing or
23 measuring devices with appropriate seals or marks.

24 Section 30. That § 37-21-15 be amended to read:

1 37-21-15. The ~~director of commercial inspection and licensing shall have the power to, and~~
2 ~~shall, from time to time, secretary may~~ weigh or measure and inspect packages or amounts of
3 commodities of ~~whatsoever~~ whatever kind kept for the purpose of sale, offered or exposed for
4 sale, sold, or in the process of delivery, ~~in order~~ to determine whether the ~~same~~ packages or
5 commodities contain the amounts represented, and whether ~~they be~~ the packages or
6 commodities are being offered for sale or sold in a manner ~~in accordance with~~ pursuant to law.

7 Section 31. That § 37-21-16 be amended to read:

8 37-21-16. The ~~director of commercial inspection and licensing~~ secretary may for the
9 purposes mentioned in § 37-21-15, and in the general performance of official duties, enter and
10 go into or upon, without formal warrant, any stand, place, building, or premises, or stop any
11 vendor or any dealer for the purpose of making proper tests.

12 Section 32. That § 37-21-18 be amended to read:

13 37-21-18. Any person who:

- 14 (1) Offers or exposes for sale, sells, uses in buying or selling of any commodity or thing,
15 or for hire or award, or retains in possession a false weight or measure or measuring
16 or weighing device, or any weight or measure or weighing or measuring device that
17 has not been sealed by the ~~Division of Commercial Inspection and Licensing~~
18 department within two years;
- 19 (2) Disposes of any condemned weight, measure, or weighing or measuring device
20 contrary to law;
- 21 (3) Removes any tag placed ~~thereon~~ by the ~~Division of Commercial Inspection and~~
22 Licensing department;
- 23 (4) Sells, offers, or exposes for sale less than the quantity the person represents;
- 24 (5) Takes or attempts to take more than the quantity the person represents, when as the

1 buyer, the person furnished the weight, measure, or weighing or measuring device by
2 means of which the amount of the commodity is determined;

3 (6) Keeps for the purpose of sale, offers or exposes for sale, or sells any commodity in
4 a manner contrary to law;

5 (7) Violates any provision of chapters 37-20 to 37-22, inclusive, for which a specific
6 penalty has not been provided; or

7 (8) Sells, offers to sell, uses, or has in possession for the purpose of selling or using any
8 device or instrument to be used, or calculated to falsify any weight or measure;

9 is guilty of a Class 2 misdemeanor.

10 Section 33. That § 37-21-21 be amended to read:

11 37-21-21. The ~~director of commercial inspection and licensing~~ secretary and any deputy,
12 assistant, or inspector may request the assistance of local law enforcement in the arrest of any
13 violator of ~~the statutes~~ law in relation to weights and measures, enter a complaint before any
14 court of competent jurisdiction, and seize and use as evidence, without formal warrant, any false
15 or unsealed weight, measure, or weighing or measuring device or package or amount of
16 commodities found to be used, retained, or offered or exposed for sale or sold in violation of
17 law.

18 Section 34. That § 37-21A-1 be amended to read:

19 37-21A-1. Terms as used in this chapter mean:

20 (1) ~~"Division," the secretary of the~~ "Department," the Department of Public Safety;

21 (2) "Placed in service report," a report submitted to the Office of Weights and Measures
22 by a registered service agent or agency, certifying that the subject device meets the
23 applicable state requirements and is legal for trade;

24 (3) "Registered service agency," any agency, firm, company, or corporation which, for

1 hire, award, commission, or any other payment of any kind, installs, services, repairs,
 2 or reconditions a weighing or measuring device, and which voluntarily registers itself
 3 as such with the secretary. Under agency registration, identification of individual
 4 servicemen ~~shall~~ may not be required;

5 (4) "Registered service agent," any individual who for hire, award, commission, or any
 6 other payment of any kind, installs, services, repairs, or reconditions a weighing or
 7 measuring device, and who voluntarily registers as such with the secretary;

8 (5) "Secretary," the secretary of the Department of Public Safety.

9 Section 35. That § 37-21A-2 be amended to read:

10 37-21A-2. ~~An individual or agency~~ Any person may apply for voluntary registration to
 11 service weighing or measuring devices on an application form supplied by the ~~director. Said~~
 12 department. The applicant shall submit a form, duly signed and witnessed, shall include
 13 certification by the applicant that the individual or agency certifying that the applicant is fully
 14 qualified to install, service, repair, or recondition whatever the weighing and measuring devices
 15 for the service of which competence is being registered; has in possession, or available for use,
 16 att. The applicant shall certify that the applicant has the necessary testing equipment and
 17 standards; and has full and knowledge of all appropriate weights and measures laws, orders,
 18 rules, and regulations. An applicant also shall submit appropriate evidence or references as to
 19 demonstrating the qualifications of the applicant.

20 Section 36. That § 37-21A-3 be amended to read:

21 37-21A-3. The ~~director~~ secretary shall charge an annual registration fee of sixty-nine dollars
 22 for each service agencies agency and ten dollars for each registered servicemen service agent
 23 to cover administrative costs. From July 1, 2007, through June 30, 2008, the fee for each agency
 24 is forty dollars and the fee for each serviceman is seven dollars. From July 1, 2008, through June

1 30, 2009, the fee for each agency is fifty-five dollars and the fee for each serviceman is eight
2 dollars. On July 1, 2009, and thereafter, the fee for each agency is sixty-nine dollars and the fee
3 for each serviceman is ten dollars. The fee shall be paid when the registration or renewal
4 application is made.

5 It is the intent of the Legislature that one-half of the inspection program funding may be
6 derived from the general fund and the other half from the fees collected pursuant to this section
7 and §§ 34-39-3, 37-21-9.1, 37-21A-7, and 37-22-10, through the General Appropriations Act.

8 Section 37. That § 37-21A-4 be amended to read:

9 37-21A-4. Upon receipt and acceptance of a properly executed application form, the ~~director~~
10 secretary shall issue to the applicant a "certificate of registration," including an assigned
11 registration number, ~~which shall remain.~~ The certificate of registration remains effective until
12 either returned by the applicant or withdrawn by the ~~director~~ secretary.

13 Section 38. That § 37-21A-5 be amended to read:

14 37-21A-5. A bearer of a certificate of registration may:

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

22 Section 39. That § 37-21A-7 be amended to read:

23 37-21A-7. A registered ~~serviceman~~ service agent and a registered service agency shall
24 submit, annually to the ~~director~~ secretary, for examination and certification, any standards and

1 testing equipment that are used, or are to be used, in the performance of the service and testing
 2 functions with respect to weighing and measuring devices for which competence is registered.
 3 No registered service ~~person~~ agent or agency may use in servicing any commercial weighing or
 4 measuring device any standards or testing equipment that have not been certified by the ~~director~~
 5 secretary. The ~~Department of Public Safety~~ department shall charge a ninety-six dollar per hour
 6 fee for ~~such the~~ examination and certification. ~~From July 1, 2007, through June 30, 2008, the~~
 7 ~~fee is sixty-two dollars per hour. From July 1, 2008, through June 30, 2009, the fee is seventy-~~
 8 ~~nine dollars per hour. On July 1, 2009, and thereafter, the fee is ninety-six dollars per hour.~~

9 It is the intent of the Legislature that one-half of the inspection program funding may be
 10 derived from the general fund and the other half from the fees collected pursuant to this section
 11 and §§ 34-39-3, 37-21-9.1, 37-21A-3, and 37-22-10, through the General Appropriations Act.

12 Section 40. That § 37-21A-8 be amended to read:

13 37-21A-8. The ~~director~~ secretary may, for good cause, after careful investigation and
 14 consideration, deny, suspend, or revoke a certificate of registration. Good cause may include any
 15 violation of a weights and measures statute, failure to submit annual calibration documentation
 16 for all weighing and measuring devices used in servicing equipment, or calculated
 17 misrepresentations with regard to a service agent's competence, equipment, or reports.

18 Section 41. That § 37-21A-10 be amended to read:

19 37-21A-10. The ~~director~~ secretary may enter into an informal reciprocal agreement with any
 20 other state that has ~~voluntary~~ registration policies similar to the policies of South Dakota. Under
 21 ~~such the~~ agreement, ~~the a~~ registered ~~servicemen~~ service agent ~~and the~~ or a registered service
 22 ~~agencies of any~~ agency of a state party to the reciprocal agreement ~~are~~ is granted full reciprocal
 23 authority, including reciprocal recognition of certification of standards and testing equipment,
 24 ~~in any state party to the agreement~~ if the registered service agency voluntarily registers in South

1 Dakota and pays the corresponding fee.

2 Section 42. That § 37-22-1 be amended to read:

3 37-22-1. All track scales and all other scales in this state used by common carriers or by
4 shippers for the purpose of weighing cars or freight offered for shipment in car lots and all
5 scales and weighing devices in public warehouses and grain elevators and all stock scales at
6 stockyards and all private, farm, and ~~town and city~~ municipal scales used in weighing hay, grain,
7 wood, coal, and like subjects of commerce ~~shall be~~ are under the supervision and control of the
8 ~~Division of Commercial Inspection and Licensing~~ department and ~~be~~ are subject to inspection
9 by it the department. Farm scales ~~shall~~ may only be inspected ~~only~~ at the request of the owner.

10 Section 43. That § 37-22-1.1 be repealed.

11 ~~— 37-22-1.1. The heavy scales division of the Public Utilities Commission is abolished, and~~
12 ~~all its functions shall be administered by the Division of Commercial Inspection and Licensing~~
13 ~~as provided by § 1-51-11.~~

14 Section 44. That § 37-22-3 be amended to read:

15 37-22-3. The ~~Division of Commercial Inspection and Licensing~~ secretary shall promulgate
16 rules, pursuant to chapter 1-26, for:

- 17 (1) The installation, testing, and maintenance of all heavy scales, including specifications
18 in conformance with standards published by the National Institute for Standards and
19 Technology in effect January 1, ~~2005~~ 2015;
- 20 (2) The frequency of inspection of ~~such~~ heavy scales; and
- 21 (3) The schedule and procedure for the correction of any deficiencies.

22 Section 45. That § 37-22-4 be amended to read:

23 37-22-4. The ~~jurisdiction of the Division of Commercial Inspection and Licensing~~
24 department has exclusive jurisdiction over the scales designated in §§ 37-22-1 and 37-22-3 ~~shall~~

1 ~~be exclusive and. The inspection thereof shall~~ of the scales may only be made ~~only~~ by and under
2 the direction of the ~~division~~ department.

3 Section 46. That § 37-22-5 be amended to read:

4 37-22-5. The ~~Division of Commercial Inspection and Licensing~~ department may appoint
5 suitable and competent inspectors to aid the ~~division~~ department in making inspections of scales
6 under its jurisdiction.

7 Section 47. That § 37-22-7 be amended to read:

8 37-22-7. The ~~Division of Commercial Inspection and Licensing~~ department may acquire
9 ~~such~~ standard weights and measures and ~~such~~ additional facilities and equipment including
10 motor vehicles or other means of conveyance ~~it deems~~ deemed necessary and suitable in
11 carrying on the work of inspecting, testing, and correcting scales and performing generally the
12 duties ~~entailed upon it~~ established by this chapter.

13 Section 48. That § 37-22-9 be amended to read:

14 37-22-9. The ~~Division of Commercial Inspection and Licensing~~ department or any agent,
15 employee, or scale inspector of the ~~division~~ department may at any time, without notice, enter
16 any place maintaining a scale subject to the provisions of this chapter and test and seal all
17 weighing scales and measures used in conducting ~~such~~ the business.

18 Section 49. That § 37-22-10 be amended to read:

19 37-22-10. The ~~Division of Commercial Inspection and Licensing~~ department shall charge
20 and collect a fee for each inspection or testing of scales. The fee shall be paid upon demand of
21 the ~~division~~ department by the person, ~~firm, or corporation~~ owning or operating the scale
22 inspected or tested. The schedule of fees is as follows:

23 (1) ~~Up to and including 1,001 to 2,000 pounds capacity;~~ inclusive, twenty-nine dollars;

24 ~~—————(a) From July 1, 2007, through June 30, 2008—twenty dollars;~~

1 ~~———— (b) From July 1, 2008, through June 30, 2009--twenty-four dollars;~~

2 ~~———— (c) Beginning July 1, 2009--twenty-nine dollars;~~

3 (2) 2,001 to 5,000 pounds capacity, inclusive: forty-eight dollars;

4 ~~———— (a) From July 1, 2007, through June 30, 2008--thirty-three dollars;~~

5 ~~———— (b) From July 1, 2008, through June 30, 2009--forty-one dollars;~~

6 ~~———— (c) Beginning July 1, 2009--forty-eight dollars;~~

7 (3) 5,001 to 40,000 pounds capacity, inclusive: eighty-two dollars;

8 ~~———— (a) From July 1, 2007, through June 30, 2008--sixty-seven dollars;~~

9 ~~———— (b) From July 1, 2008, through June 30, 2009--seventy-five dollars;~~

10 ~~———— (c) Beginning July 1, 2009--eighty-two dollars;~~

11 (4) Over 40,000 pounds capacity: one hundred three dollars;

12 ~~———— (a) From July 1, 2007, through June 30, 2008--eighty-four dollars;~~

13 ~~———— (b) From July 1, 2008, through June 30, 2009--ninety-four dollars;~~

14 ~~———— (c) Beginning July 1, 2009--one hundred three dollars;~~

15 (5) All livestock scales: one hundred seventy-three dollars.

16 ~~———— (a) From July 1, 2007, through June 30, 2008--one hundred twenty-four dollars;~~

17 ~~———— (b) From July 1, 2008, through June 30, 2009--one hundred forty-eight dollars;~~

18 ~~———— (c) Beginning July 1, 2009--one hundred seventy-three dollars.~~

19 If a special or emergency inspection is requested, a charge, not to exceed the actual cost of
20 ~~such~~ the inspection, including costs for personnel, equipment, and mileage, shall be made and
21 assessed against the requesting individual person or device owner.

22 It is the intent of the Legislature that one-half of the inspection program funding may be
23 derived from the general fund and the other half from the fees collected pursuant to this section
24 and 34-39-3, 37-21-9.1, 37-21A-3, and 37-21A-7, through the General Appropriations Act.

1 Section 50. That § 37-22-12 be amended to read:

2 37-22-12. ~~Whenever~~ If a request is made by the owner to test a scale outside of the regular
3 route or regular tour of inspection of any scale inspector ~~or inspectors~~ and it is found necessary
4 by the ~~Division of Commercial Inspection and Licensing~~ department to send and dispatch a
5 scale inspector ~~or inspectors~~ with the scale inspection truck and its scale testing equipment, a
6 charge, based upon the number of hours it takes for ~~such~~ the travel from the point of departure
7 to the place where ~~such~~ the scale inspection and testing is to be made and return to the point of
8 departure, shall be made and assessed against the owner of ~~such~~ the scale ~~and collection made~~
9 ~~as provided in.~~ The fee shall be charged and collected pursuant to the provisions of § 37-22-10.
10 ~~Such~~ The per hour charge shall be fixed and collected by the ~~division~~ department.

11 Section 51. That § 37-22-13 be amended to read:

12 37-22-13. If the person making an inspection pursuant to § 37-22-9 finds any ~~scales~~ scale
13 in use ~~in such place~~ inaccurate, the inspector shall condemn, or reject for repair, the ~~scales~~ scale
14 and attach ~~thereto~~ to the scale a card, notice, or other device, indicating that the ~~scales are~~ scale
15 is condemned or rejected. It is a Class 2 misdemeanor for any person to remove, deface, or
16 destroy ~~such~~ the card, notice, or other device placed upon the condemned or rejected ~~scales~~.
17 ~~Scales~~ scale. Any scale tagged as "condemned for repairs", shall be repaired or corrected within
18 sixty days; ~~and they~~. The scale may not be used for any purpose until ~~they have~~ the scale has
19 been repaired, retested, found to be correct, and ~~are~~ is placed in service by a registered service
20 agency or agent or until the ~~Division of Commercial Inspection and Licensing~~ shall consent
21 department has consented to the ~~further~~ use of ~~such scales~~ the scale. The owner or operator of
22 any weighing device tagged or marked "rejected for repair", may continue to use the device but
23 shall have the device repaired or corrected within thirty days by a registered service agency or
24 agent.

1 Section 52. That § 37-22-16 be amended to read:

2 37-22-16. ~~All fees and funds of any kind~~ Any money collected under the provisions of this
3 chapter shall be ~~by the Division of Commercial Inspection and Licensing deposited with the~~
4 ~~state treasurer and by him credited to~~ deposited in the general fund.

5 Section 53. That § 37-22-17 be amended to read:

6 37-22-17. Except as otherwise provided in this chapter, any person:

- 7 (1) Neglecting to install a seal for the preservation of adjustment as required by this
8 chapter, upon any scale under the jurisdiction of the ~~Division of Commercial~~
9 ~~Inspection and Licensing~~ department, after thirty days' notice so to do;
- 10 (2) Removing, defacing, or destroying any seal placed upon any scale by any agent,
11 employee, or scale inspector of the ~~division~~ department for the purpose of fixing or
12 preserving the adjustment of the scale in order to ensure its accuracy;
- 13 (3) Removing, defacing, or destroying any seal, tag, card, notice, or other device placed
14 upon any scale by any agent, employee, or scale inspector of the ~~division~~ department
15 for the purpose of indicating that the scale has been condemned, and ~~must~~ may not
16 be used;
- 17 (4) Using or permitting the use of any scale that has been tested and found to be
18 incorrect, before it is again tested and found to be correct and the further use ~~thereof~~
19 of the scale is authorized or consented to by the ~~division~~ department;
- 20 (5) Preventing or attempting to prevent or in any way interfering with any ~~member,~~
21 ~~inspector,~~ agent, ~~or employee,~~ scale inspector of the ~~division~~ department from
22 entering the premises where ~~such scales~~ a scale may be kept, or inspecting or testing
23 ~~such scales~~ a scale; or
- 24 (6) Neglecting to observe any rule or regulation of the ~~division~~ department relating to

1 ~~scales~~ a scale;
2 is guilty of a Class 2 misdemeanor.

3 Section 54. That § 37-22-18 be amended to read:

4 37-22-18. The ~~director of the Division of Commercial Inspection and Licensing~~ secretary
5 may grant a variance, upon request from a scale owner or operator, to any rules or specifications
6 governing the scale except those specifying a tolerance or the value of a minimum division. The
7 owner or operator shall demonstrate the variance is needed due to economic unfeasibility or
8 impossibility of conformance with specifications. The variance shall be consistent with good
9 commercial practices in South Dakota and, under normal circumstances, the weighing
10 equipment shall remain accurate and reliable and the variance may not harm the owner,
11 operator, or ~~customers~~ any customer. The ~~secretary of the Department of Public Safety~~ shall,
12 pursuant to chapter 1-26, promulgate rules for the application process and criteria to be used in
13 granting or rejecting a variance.

14 Section 55. That § 37-22A-3 be amended to read:

15 37-22A-3. Each scale ticket issued by vehicle scales used in commercial trade shall show
16 the name of the agency performing the weighing service, the date of the weighing, the number
17 of the scale or other information identifying the scale upon which the weighing is performed,
18 the name of the person or firm having a vehicle weighed, and the name of the weighmaster, or
19 understandable abbreviations of ~~such the names. Scale tickets~~ Each scale ticket issued under this
20 chapter shall be in duplicate form; and serially numbered; ~~and if such tickets are.~~ If the ticket
21 is used on a type-registering weighbeam ~~they, the ticket~~ shall conform to specifications set by
22 the ~~Division of Commercial Inspection and Licensing~~ department. One copy of ~~such the~~ scale
23 ticket shall be retained by the agency performing the weighing service, and one copy of ~~such the~~ scale
24 ticket shall be furnished to the person ~~or firm~~ having the vehicle weighed. No change of

1 weight ~~shall~~ may be made on any ~~such~~ ticket.

2 Section 56. That § 37-22A-4 be amended to read:

3 37-22A-4. In case of error of the weighmaster in preparing a scale ticket, ~~he the weighmaster~~
4 shall prepare a corrected ticket showing the ~~corrections~~ correction made and stating on the back
5 ~~thereof the reasons for such changes. In event of~~ of the ticket the reason for the change. If an
6 error in the preparation of ~~such the~~ ticket, other than the weight, due to misinformation ~~having~~
7 ~~been~~ furnished to the weighmaster by the person ~~or firm~~ having a vehicle weighed, the
8 weighmaster upon request of ~~such the~~ person ~~or firm~~ shall issue another ticket bearing the
9 appropriate ~~corrections~~ correction or a correction slip which ~~shall show thereon the changes~~
10 shows any change made ~~and on the back thereof the reasons for such changes of the ticket and~~
11 the reason for the change. Before ~~such the~~ correction ticket or slip ~~shall be~~ is issued the
12 weighmaster shall require the person requesting the change to sign ~~such the~~ ticket or slip. The
13 correction ticket or slip shall be attached to the original ticket, bear the same serial number, and
14 show on its face that it is a correction ticket or slip.

15 Section 57. That § 37-22A-5 be amended to read:

16 37-22A-5. The provisions of chapter 37-22, relating to heavy scales and defining the duties
17 and powers of the ~~Division of Commercial Inspection and Licensing~~ shall department apply to
18 and govern the administration and enforcement of this chapter.

19 Section 58. That chapter 34-39 be amended by adding a NEW SECTION to read:

20 Terms used in this chapter mean:

- 21 (1) "Department," the Department of Public Safety;
- 22 (2) "Secretary," the secretary of the Department of Public Safety.

23 Section 59. That chapter 37-20 be amended by adding a NEW SECTION to read:

24 Terms used in this chapter mean:

1 (1) "Department," the Department of Public Safety;

2 (2) "Secretary," the secretary of the Department of Public Safety.

3 Section 60. That chapter 37-21 be amended by adding a NEW SECTION to read:

4 Terms used in this chapter mean:

5 (1) "Department," the Department of Public Safety;

6 (2) "Secretary," the secretary of the Department of Public Safety.

7 Section 61. That chapter 37-22 be amended by adding a NEW SECTION to read:

8 Terms used in this chapter mean:

9 (1) "Department," the Department of Public Safety;

10 (2) "Secretary," the secretary of the Department of Public Safety.

11 Section 62. That chapter 37-22A be amended by adding a NEW SECTION to read:

12 Terms used in this chapter mean:

13 (1) "Department," the Department of Public Safety;

14 (2) "Secretary," the secretary of the Department of Public Safety.