

## House Substitute for SENATE BILL No. 227

By Committee on Agriculture and Natural Resources

3-17

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1 AN ACT concerning weights and measures; relating to charging for  
2 services; unlawful acts; technical representatives; amending K.S.A.  
3 2015 Supp. 83-214, 83-219 and 83-302 and repealing the existing  
4 sections.

5  
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2015 Supp. 83-214 is hereby amended to read as  
8 follows: 83-214. (a) The secretary may try and prove weights, measures,  
9 balances and other measuring devices on request for any person,  
10 corporation or institution, and when the same are found or made to  
11 conform to the state standards, and otherwise fulfill such reasonable  
12 requirements as the secretary may make, the secretary, or an authorized  
13 representative of the secretary, may seal the same with a seal which is kept  
14 for that purpose.

15 (b) (1) Except as otherwise provided by statute, the secretary, or the  
16 authorized representative of the secretary, may charge for services  
17 provided by the department and other necessary and incidental expenses or  
18 both incurred in conjunction with the testing and proving of weights,  
19 measures and other devices at a rate per hour or fraction thereof and other  
20 necessary and incidental expenses which are fixed by rules and regulations  
21 adopted by the secretary of agriculture, except that (1) the charges for  
22 services provided by the metrology lab shall not exceed \$50 per hour or  
23 fraction thereof, and (2) in the case of the head house scale program such  
24 charges shall not exceed \$100 per hour or fraction thereof. rates  
25 prescribed pursuant to this section. An in-state rate shall be charged to  
26 licensed service companies that have licensed technical representatives  
27 performing service work in Kansas. An additional fee for adjustment of  
28 any weight, measure or other device may be assessed. The rates charged  
29 by the secretary shall be as follows:

1

Category	In-State rate	In-State rate for quantities of 10 or more	In-State rate for quantities of 100 or more	Standard rate	Standard rate for quantities of 10 or more	Adjustment fee per piece
Select table column						
Large Mass ( $\leq 1,250$ lbs through $\geq 100$ lbs, 500 kg through 50 $\geq$ kg)	\$16	\$8	\$6	\$20	\$10	\$5
Medium Mass ( $< 100$ lbs through $\geq 20$ lbs, $< 50$ kg through 10 $\geq$ kg)	\$6	\$4	\$2	\$10	\$5	\$5
Small Mass ( $< 20$ lbs through $\geq 0.001$ lbs, $< 10$ kg through 1 mg)	\$6	\$4	\$2	\$10	\$5	\$5
Small Mass Set ( $\leq 10$ lbs through $\geq 0.001$ lbs, $\leq 5$ kg through $\geq 20$ mg)	\$35	\$35	\$35	\$45	\$45	\$5
Precision Mass (1,000 lbs through 0.001 lbs, 30 kg through 1 mg) ASTM 2, 3, 4, 5	\$20	\$20	\$20	\$30	\$30	\$40
Precision Mass Echelon I (30 kg through 1 mg) ASTM 1 or ASTM 0	\$40	\$40	\$40	\$60	\$60	\$5
Extra Large Headhouse Weights (3,000 lbs through $> 1,250$ lbs)	\$40	\$40	\$40	\$50	\$50	\$5
Weight Carts (6,000 lbs through 2,000 lbs)	\$80	\$80	\$80	\$100	\$100	\$25
Weight Carts (8,000 lbs)	\$200	\$200	\$200	\$220	\$220	\$25
Large Volume (100 gal or less)	\$85	\$85	\$85	\$100	\$100	\$25
Large Volume (greater than 100 gal and less than or equal to 200 gal)	\$185	\$185	\$185	\$200	\$200	\$25
Large Volume (greater than 200 gal and less than or equal to 500 gal)	\$285	\$285	\$285	\$300	\$300	\$25
Large Volume (greater than 500 gal)	\$485	\$485	\$485	\$500	\$500	\$25
Small Volume (5 gal)	\$50	\$50	\$50	\$70	\$70	\$10
Gravimetric Volume (5 gal)	\$180	\$180	\$180	\$200	\$200	\$200
Thermometry ( $-35^{\circ}\text{C}$ through $150^{\circ}\text{C}$ ) (Based on a per point calibration)	\$90	\$75	\$75	\$110	\$90	

1       (2) *The secretary may charge the following additional fees for*  
 2 *preparing items for shipment:*

3    Category	Rate
4    Large Mass ( $\leq 1,250$ lbs through $\geq 100$ lbs, 500 kg through $50 \geq$ kg)....	\$20
5    Medium Mass ( $< 100$ lbs through $\geq 20$ lbs, $< 50$ kg through $\geq 10$ kg)....	\$30
6    Small Mass ( $< 20$ lbs through $\geq 0.001$ lbs, $< 10$ kg through 1 mg).....	\$20
7    Small Mass Set ( $\leq 10$ lbs through $\geq 0.001$ lbs,	
8 $\leq 5$ kg through $\geq 1$ mg).....	\$20
9    Precision Mass (1,000 lbs through 0.001 lbs, 30 kg through 1 mg).....	\$10
10   Precision Mass Set (1,000 lbs through 0.001 lbs,	
11       30 kg through 1 mg).....	\$20
12   Extra Large Headhouse Weights (3,000 lbs through $> 1,250$ lbs).....	\$40
13   Weight Carts (8,000 lbs through 2,000 lbs).....	\$100
14   Large Volume (1,000 gal through 20 gal).....	\$100
15   Large Volume LPG (1,000 gal through 20 gal).....	\$100
16   Small Volume (5 gal).....	\$20
17   Gravimetric Volume (5 gal).....	\$20
18   Thermometry ( $-35^{\circ}\text{C}$ through $150^{\circ}\text{C}$ )	
19       (Based on a 2 point calibration).....	\$20

20       (3) *For any service provided pursuant to this subsection that is not*  
 21 *listed in the fee schedules in subsections (b)(1) and (b)(2), the secretary*  
 22 *shall determine that fee to be charged.*

23       (4) *For any service provided pursuant to this subsection, the*  
 24 *secretary may charge a minimum fee of \$50 per invoice.* The secretary  
 25 may charge for subsistence and transportation of personnel and equipment  
 26 to such point and return. Such charges shall be set by rules and regulations  
 27 adopted by the secretary of agriculture.

28       (5) The secretary may fix the manner in which any charges made  
 29 pursuant to this subsection are collected.

30       (c) The secretary shall remit all moneys received under subsection (b)  
 31 to the state treasurer in accordance with the provisions of K.S.A. 75-4215,  
 32 and amendments thereto. Upon receipt of each such remittance, the state  
 33 treasurer shall deposit the entire amount in the state treasury to the credit  
 34 of the weights and measures fee fund which is hereby created. All  
 35 expenditures from the weights and measures fee fund shall be made in  
 36 accordance with appropriation acts upon warrants of the director of  
 37 accounts and reports issued pursuant to vouchers approved by the  
 38 secretary or by a person designated by the secretary.

39       (d) Except as provided in K.S.A. 83-301 through 83-311, and  
 40 amendments thereto, nothing in article 2 of chapter 83 of the Kansas  
 41 Statutes Annotated, and amendments thereto, shall prohibit the owner of a  
 42 weighing or measuring device or the owner's employee or agent from  
 43 servicing or repairing such device. However, if such device is found out of

1 tolerance and is rejected by the department of agriculture, the owner is  
2 responsible for repairing the device within the time specified on the  
3 rejection tag and notifying the department when the device is repaired and  
4 in operation. The owner shall pay a fee commensurate with the expense  
5 incurred by the secretary in performing the follow-up inspections or tests.

6 Sec. 2. K.S.A. 2015 Supp. 83-219 is hereby amended to read as  
7 follows: 83-219. (a) It shall be unlawful for any person:

8 (1) To offer or expose for sale, or to ~~sell or otherwise dispose of~~ any  
9 weight, measure or weighing or measuring device that does not meet the  
10 tolerances and specifications required by chapter 83 of the Kansas Statutes  
11 Annotated, and amendments thereto, or which has been rejected without  
12 first obtaining the written authorization of the secretary;

13 (2) to use ~~or possess~~ a weight, measure or weighing or measuring  
14 device ~~that is used for or intended to be used~~ for commercial purposes  
15 which does not meet the tolerance and specifications required by chapter  
16 83 of the Kansas Statutes Annotated, and amendments thereto, or that does  
17 not conform to the standard authorized by the secretary for determining the  
18 quantity of any commodity or article of merchandise, for the purpose of:

19 (A) Buying or selling any commodity or article of merchandise;

20 (B) computation of any charge for services rendered on the basis of  
21 weight or measure;

22 (C) determining weight or measure, either when a charge is made for  
23 such determination or where no charge is made for use of such weight,  
24 measure, weighing or measuring device;

25 (3) except as allowed in K.S.A. 83-225, and amendments thereto, to  
26 break or remove any tag, mark or seal placed on any weighing or  
27 measuring device by the secretary or a county or city inspector of weights  
28 and measures, without specific written authorization from the proper  
29 authority or to use a weighing or measuring device after the lapse of the  
30 authorized period following the placing of a rejection tag thereon by the  
31 secretary, unless further extension of time for any repair purposes is first  
32 obtained from the secretary;

33 (4) to sell, offer or expose for sale, less than the represented quantity  
34 of any commodity, thing or service;

35 (5) to take or attempt to take more of the represented quantity of any  
36 commodity, thing or service when the buyer furnishes the weight, measure  
37 or weighing or measuring device by which the amount of any commodity,  
38 thing or service is determined;

39 (6) to keep for the purpose of sale, or to offer or expose for sale, or to  
40 sell any commodity in a manner contrary to the law or contrary to any rule  
41 and regulation;

42 (7) to use in retail trade, except in preparation of packages of  
43 merchandise put up in advance of sale, a weighing or measuring device

1 that is not so positioned that its indications may be accurately read and the  
2 weighing or measuring operation observed from a reasonable customer  
3 position;

4 (8) to violate any of the provisions of chapter 83 of the Kansas  
5 Statutes Annotated, and amendments thereto, or rules and regulations  
6 adopted thereunder, for which a specific penalty is not provided;

7 (9) to sell or offer for sale, or use or possess for the purpose of selling  
8 or using any device or instrument to be used or calculated to falsify any  
9 weight or measure;

10 (10) to dispose of any rejected weight or measure in a manner  
11 contrary to law or rules and regulations;

12 (11) to expose for sale, offer for sale or sell any commodity in  
13 package form, without it being so wrapped, or the container so made,  
14 formed or filled, that it will not mislead the purchaser as to the quantity of  
15 the contents of the package;

16 (12) to expose for sale, offer for sale or sell any commodity in any  
17 container where the contents of the container fall below such reasonable  
18 standard of fill as may have been prescribed for the commodity in question  
19 by the secretary;

20 (13) to misrepresent the price of any commodity or service sold,  
21 offered, exposed or advertised for sale by weight, measure or count, nor  
22 represent the price in any manner calculated or tending to mislead or in  
23 any way deceive any person;

24 (14) to misrepresent, or represent in a manner calculated or tending to  
25 mislead or deceive an actual or prospective purchaser, the price of an item  
26 offered, exposed or advertised for sale at retail;

27 (15) to compute or attempt to compute at the time of sale of an item, a  
28 value which is not a true extension of a price per unit which is then  
29 advertised, posted or quoted;

30 (16) to charge or attempt to charge, at the time of the sale of an item  
31 or commodity, a value which is more than the price which is advertised,  
32 posted or quoted;

33 (17) to alter a weight certificate, use or attempt to use any such  
34 certificate for any load or part of a load or for articles or things other than  
35 for which the certificate is given, or, after weighing and before the delivery  
36 of any articles or things so weighted, alter or diminish the quantity thereof;

37 (18) to hinder or obstruct in any way the secretary or any of the  
38 secretary's authorized agents in the performance of the secretary's official  
39 duties under chapter 83 of the Kansas Statutes Annotated, and amendments  
40 thereto, or any rules and regulations adopted thereunder;

41 (19) to fail to follow the standards and requirements established in  
42 K.S.A. 83-202, and amendments thereto, or any rules and regulations  
43 adopted thereunder;

1 (20) to fail to pay all fees and penalties as prescribed by chapter 83 of  
2 the Kansas Statutes Annotated, and amendments thereto, and the rules and  
3 regulations adopted thereunder;

4 (21) to fail to keep or make available for examination or provide to  
5 the secretary all inspection reports, test reports and any other service  
6 reports or other information on any device owned or operated by the  
7 owner or any agent or employee of the owner and other information  
8 necessary for the enforcement of chapter 83 of the Kansas Statutes  
9 Annotated, and amendments thereto, or any rules and regulations adopted  
10 thereunder, and as required by the secretary;

11 (22) to fail to have any commercial weight, measure or weighing and  
12 measuring device tested as required by chapter 83 of the Kansas Statutes  
13 Annotated, and amendments thereto, or any rules and regulations adopted  
14 thereunder;

15 (23) to sell or offer or expose for sale liquefied petroleum gas in  
16 packages or containers which do not bear a statement as to tare and net  
17 weight as required by chapter 83 of the Kansas Statutes Annotated, and  
18 amendments thereto, or any rules and regulations adopted thereunder, or  
19 packages or containers which bear a false statement as to weights;

20 (24) to sell, use, remove, or otherwise dispose of, or fail to remove  
21 from the premises specified, any weighing or measuring device or package  
22 or commodity contrary to the terms of any order issued by the secretary;

23 (25) to violate any order issued by the secretary pursuant to chapter  
24 83 of the Kansas Statutes Annotated, and amendments thereto; and

25 (26) to prohibit a buyer or seller from observing the weighing or  
26 operation of any transaction to which such buyer or seller is a party.

27 (b) It shall be unlawful for any service company or technical  
28 representative to *knowingly*:

29 (1) Act as or represent such person's self to be a technical  
30 representative without having a valid license issued by the Kansas  
31 department of agriculture;

32 (2) certify a device as correct unless the device meets the tolerances  
33 and specifications as required by chapter 83 of the Kansas Statutes  
34 Annotated, and amendments thereto, or any rules and regulations adopted  
35 thereunder;

36 (3) hinder or obstruct in any way the secretary in the performance of  
37 the secretary's official duties under chapter 83 of the Kansas Statutes  
38 Annotated, and amendments thereto, or any rules and regulations adopted  
39 thereunder;

40 (4) fail to follow the standards and requirements set forth in K.S.A.  
41 83-202, and amendments thereto, or any rules and regulations adopted  
42 thereunder;

43 (5) fail to complete the testing or placing-in-service report in its

1 entirety and to report the accurate description of the parts replaced,  
2 adjusted, reconditioned or work performed;

3 (6) file a false or fraudulent service company or technical  
4 representative application or reports to the secretary;

5 (7) fail to pay all fees and penalties as prescribed by chapter 83 of the  
6 Kansas Statutes Annotated, and amendments thereto, and the rules and  
7 regulations adopted thereunder;

8 (8) fail to keep or make available for examination in an accessible  
9 and legible manner or provide to the secretary in a legible manner all  
10 inspection reports, test reports, and any other service or report work  
11 information on any device which the service company or an agent or  
12 employee performed work on and other information necessary for the  
13 enforcement of chapter 83 of the Kansas Statutes Annotated, and  
14 amendments thereto, or any rules and regulations adopted thereunder; or

15 (9) sell, offer or expose for sale a weighing or measuring device  
16 intended to be used commercially, which is not traceable to a national type  
17 evaluation program certificate of conformance.

18 (c) For the purpose of ~~paragraph~~ subsection (a)(4), the selling and  
19 delivery of a stated quantity of any commodity shall be prima facie  
20 evidence of representations on the part of the seller that the quantity sold  
21 and delivered was the quantity bought by the purchaser.

22 (d) Violation of this section shall be deemed a deceptive act and  
23 practice as defined by K.S.A. 50-626, and amendments thereto. Violations  
24 of the provisions of K.S.A. 83-219, and amendments thereto, may be  
25 enforced by the secretary under the administrative provisions of chapter 83  
26 of the Kansas Statutes Annotated, and amendments thereto, or by the  
27 attorney general or a county or district attorney under the Kansas  
28 consumer protection act.

29 Sec. 3. K.S.A. 2015 Supp. 83-302 is hereby amended to read as  
30 follows: 83-302. (a) (1) Each person, other than an authorized  
31 representative of the secretary or an authorized representative of a city or  
32 county department of public inspection of weights and measures  
33 established pursuant to K.S.A. 83-210, and amendments thereto, desiring  
34 to operate and perform testing and other services as a company in Kansas  
35 shall apply to the secretary for a service company license, on a form to be  
36 supplied by the secretary, and shall obtain such license from the secretary  
37 before operating and performing testing or other services as a service  
38 company. Each service company shall obtain a license for each place of  
39 business maintained in Kansas and shall pay a license application fee of  
40 \$50, ~~or commencing July 1, 2002, and ending June 30, 2010, a fee of \$100~~  
41 ~~and thereafter an annual license renewal application fee of \$50, or~~  
42 ~~commencing July 1, 2002, and ending June 30, 2010, a fee of \$100 for~~  
43 ~~each place of business.~~

1       (2) *Beginning with the 2017 license year, the secretary may, by order,*  
2 *set the license application fee, not to exceed the maximum fee stated*  
3 *herein:*

4       (A) *Commencing July 1, 2017, the license application fee shall not*  
5 *exceed \$100.*

6       (B) *Commencing July 1, 2019, the license application fee shall not*  
7 *exceed \$110.*

8       (C) *Commencing July 1, 2021, the license application fee shall not*  
9 *exceed \$120.*

10       (D) *Commencing July 1, 2023, and thereafter, the license application*  
11 *fee shall not exceed \$130.*

12       (3) Each service company license shall expire on June 30 following  
13 issuance, shall be void unless renewed prior to the expiration and shall not  
14 be transferable. *The license renewal fee shall be equal to the license*  
15 *application fee as provided in this section for each place of business.*

16       (b) If any service company maintains any out-of-state places of  
17 business which the company operates in serving Kansas patrons, the  
18 service company seeking to obtain or renew a license under this section  
19 shall list in the application such places of business and the firm names  
20 under which the company operates at each such place of business. If any  
21 out-of-state place of business is established by a service company after  
22 being licensed under this section, the licensee shall supply such  
23 information to the secretary before any work is performed in Kansas from  
24 such out-of-state location. Each nonresident service company shall  
25 designate a resident agent upon whom service of notice or process may be  
26 made to enforce the provisions of chapter 83 of the Kansas Statutes  
27 Annotated, and amendments thereto, or any liabilities arising from  
28 operations thereunder. Each nonresident service company which maintains  
29 no established place of business in Kansas shall obtain a license under this  
30 section for each out-of-state place of business and shall list on the  
31 application the firm name or names for each place of business from which  
32 the service company intends to operate.

33       (c) (1) Each technical representative shall be licensed annually by the  
34 secretary. *Except as provided in paragraph (2), each technical*  
35 *representative shall be required to attend continuing education seminars on*  
36 *an annual basis as required by rules and regulations adopted by the*  
37 *secretary and to pass a reasonable examination prescribed by the secretary*  
38 *each year prior to being licensed. ~~The Kansas department of agriculture~~*  
39 *~~shall be authorized to charge a fee to the attendees of the continuing~~*  
40 *~~education seminars sponsored by the agency. The amount charged shall be~~*  
41 *~~no more than is necessary to cover the expenses incurred in providing the~~*  
42 *~~seminar.~~* Each technical representative's license shall expire on June 30  
43 following the issuance of the license and shall be void unless renewed

1 prior to the expiration.

2       (2) *Beginning on July 1, 2017, each technical representative who has*  
3 *had 10 years of continuous licensure with no administrative enforcement*  
4 *action adjudicated against such technical representative during such 10-*  
5 *year period shall be eligible to obtain a three-year license. The secretary*  
6 *shall implement, by order, the fee for such three-year license, which shall*  
7 *be an amount not to exceed \$300. Each technical representative holding a*  
8 *three-year license shall be required to complete continuing education as*  
9 *described in subsection (c)(1) at a frequency not to exceed once per three-*  
10 *year period. The secretary may promulgate rules and regulations to*  
11 *require any technical representative who has been adjudicated in violation*  
12 *of this act or any rules and regulations promulgated by the secretary, to*  
13 *seek renewal of a license on an annual basis and may establish criteria for*  
14 *reinstatement of eligibility for a three-year license.*

15       (3) *The department of agriculture is authorized to charge a fee to the*  
16 *attendees of continuing education seminars sponsored by the department.*  
17 *The amount of such fee shall be no more than is necessary to cover the*  
18 *expenses incurred by providing the seminar.*

19       (d) No service company license may be issued or renewed under this  
20 section until the applicant's weights or measures, or both have been tested  
21 for accuracy and sealed by the secretary. The secretary is authorized to  
22 accept a certification of the accuracy of the applicant's weights or  
23 measures issued by the national institute of standards and technology or by  
24 a weights and measures laboratory certified by the national institute of  
25 standards and technology in lieu of a test by the secretary, if such  
26 certificate shows that the weights or measures have been tested within the  
27 last 365 days preceding the license application.

28       (e) The secretary shall remit all moneys received under this section to  
29 the state treasurer in accordance with the provisions of K.S.A. 75-4215,  
30 and amendments thereto. Upon receipt of each such remittance, the state  
31 treasurer shall deposit the entire amount in the state treasury to the credit  
32 of the weights and measures fee fund.

33       Sec. 4. K.S.A. 2015 Supp. 83-214, 83-219 and 83-302 are hereby  
34 repealed.

35       Sec. 5. This act shall take effect and be in force from and after its  
36 publication in the statute book.