

HOUSE BILL NO. 127

INTRODUCED BY R. SHAW

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING PETROLEUM DISPENSING DEVICE LAWS; PROVIDING RULEMAKING AUTHORITY; ALLOWING RANDOM INSPECTION OF SELECTED PETROLEUM DISPENSING DEVICES RATHER THAN MANDATORY INSPECTION OF ALL DEVICES; ALLOWING REGISTERED SERVICE PROVIDERS TO PERFORM PETROLEUM DISPENSING DEVICE TESTING RATHER THAN THE DEPARTMENT OF LABOR AND INDUSTRY; ALLOWING FEES TO BE BASED ON NUMBER OF DEVICES TESTED; AND AMENDING SECTIONS 30-12-202, 30-12-205, AND 82-15-105, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 30-12-202, MCA, is amended to read:

"30-12-202. Specific powers and duties of department -- rules. (1) The department shall adopt from time to time reasonable rules for the enforcement of parts 1 through 5, and the rules have the effect of law. These rules may include:

(a) schedules of fees for testing and certification;

(b) standards of net weight, measure, or count and reasonable standards of fill for any commodity in package form;

(c) rules governing the technical and reporting procedures to be followed and the report and record forms and marks of approval and rejection to be used by the department and registered service providers ~~in the discharge of its official duties;~~

(d) exemptions from the sealing or marking requirements of 30-12-209 with respect to weights and measures of a character or size that sealing or marking would be inappropriate, impracticable, or damaging to the apparatus involved; and

(e) rules governing the ~~voluntary~~ registration and regulation of service providers and service agencies that test, inspect, and place devices into service.

(i) These rules may:

(A) establish qualifications for registration, including training and examination;



- 1 (B) set fees for initial registration and renewals;
 2 (C) govern the conduct and discipline of registered service providers and service agencies;
 3 (D) establish procedures for an auditing program to evaluate inspections and testing by registered
 4 service providers and service agencies; and
 5 (E) establish requirements to perform the testing and inspections by registered service providers and
 6 service agencies.

7 (ii) These rules may not preclude or limit any individual or entity not registered with the department from
 8 installing, servicing, repairing, or reconditioning a commercial weighing or measuring device.

9 (2) The rules described in subsection (1) must include specifications, tolerances, and other technical
 10 requirements for weights and measures subject to inspection and testing under 30-12-205, designed to eliminate
 11 from use, without prejudice to apparatus that conforms as closely as practicable to the official standards, those:

- 12 (a) that are not accurate;
 13 (b) that are not reasonably permanent in their adjustment or will not repeat their indications correctly;
 14 or
 15 (c) that facilitate the perpetration of fraud.

16 (3) The specifications, tolerances, and other technical requirements for commercial weighing and
 17 measuring devices, together with amendments to the specifications, as recommended by the national institute
 18 of standards and technology and published in national institute of standards and technology Handbook 44 and
 19 supplements to that handbook or in any publication revising or superseding Handbook 44, are the specifications,
 20 tolerances, and other technical requirements for commercial weighing and measuring devices of this state, except
 21 as specifically modified, amended, or rejected by a rule issued by the department.

22 (4) An apparatus is considered to be "correct" when it conforms to all applicable requirements adopted
 23 as specified in this section. Other apparatus are considered to be "incorrect".

24
 25 **Section 2.** Section 30-12-205, MCA, is amended to read:

26 **"30-12-205. General testing -- penalties -- rulemaking.** (1) When not otherwise provided by law, the
 27 department may inspect and test all weights and measures kept, offered, or exposed for sale to determine if they
 28 are correct.

29 (2) The department, within a 12-month period or less frequently if in accordance with a schedule issued
 30 by it, and as often as it considers necessary, shall inspect and test, to ascertain if they are correct, all weights

1 and measures commercially used:

2 (a) in determining the weight, measurement, or count of commodities or things sold or offered or exposed
3 for sale on the basis of weight, measure, or count; or

4 (b) in computing the basic charge or payment for services rendered on the basis of weight, measure,
5 or count.

6 (3) (a) The department may inspect and test the delivery of all petroleum products dispensed from a
7 device with a listed maximum delivery rate of 20 gallons per minute or less on a random basis as set forth in
8 administrative rules. The department may charge a reasonable fee for the random inspections and may develop
9 a monitoring program to evaluate the effectiveness of the random testing program.

10 (b) At the time of an initial application or the renewal of a license for petroleum dispensing devices with
11 a listed flow rate of 20 gallons per minute or less, the licensee must specify whether the licensed location will be
12 randomly tested or whether all products dispensed from any device will be tested by the department. The
13 department may charge a separate reasonable fee for each additional product tested in excess of the number
14 of products randomly tested.

15 (4) (a) The department may adopt rules to provide for testing of commercial petroleum dispensing
16 devices with a listed maximum delivery rate of more than 20 gallons per minute. At the time a new application
17 is submitted or an existing licensed is renewed, the licensee must specify whether the testing will be performed
18 by the department or a registered service provider. The department may establish by rule a reasonable
19 administrative fee for testing performed by a registered service provider.

20 (b) The department may adopt rules establishing a procedure to be followed when a licensee fails to
21 have testing and inspections completed by a registered service provider as required by this subsection, and may
22 allow assessment of a penalty fee to the licensee.

23 ~~(3)~~(5) With respect to single-service devices designed to be used commercially only once and to be then
24 discarded and with respect to devices uniformly mass-produced, as by means of a mold or die, and not
25 susceptible of individual adjustment, tests may be made on representative samples of the devices. The lots of
26 which the samples are representative must be held to be correct or incorrect upon the basis of the results of the
27 inspections and tests on the samples.

28 ~~(4)~~(6) An itinerant peddler or hawker using weights and measures shall register the peddler's or hawker's
29 name and address with the department so that the peddler's or hawker's equipment can be tested in accordance
30 with the provisions of this law.

1 (7) Subsections (3) and (4) do not apply to the testing and inspections of devices that dispense liquefied
2 petroleum gas."

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4 **Section 3.** Section 82-15-105, MCA, is amended to read:

5 **"82-15-105. Licenses and fees -- ~~status of license on transfer of ownership~~.** (1) A petroleum dealer
6 or liquefied petroleum dealer may not do business in this state until licensed by the department. The license must
7 be obtained by the dealer by making application to the department upon forms provided by the department. A
8 dealer who has not been issued a license and who is found selling, offering for sale, delivering, or distributing
9 petroleum products shall be punished upon conviction as provided by this part.

10 (2) The department shall adopt rules establishing license fees and may establish the license fees based
11 upon on the measuring devices used by the dealer number of petroleum products required to be tested at each
12 licensed location. The fees may be paid by credit card and may be discounted for payment processing charges
13 paid by the department to a third party. The fees must be deposited in the state special revenue fund of the
14 department for use in administrating and enforcing this part.

15 (3) All licenses are annual and expire on the anniversary date established by rule by the board of review
16 established in 30-16-302. There is an additional charge of 50% on all license fees that are not paid within 60 days
17 of the licensee's anniversary date. If the fee is not paid, the equipment must be sealed and removed from service
18 by the department. It is unlawful for anyone to use a device removed from service or to break the seal until all fees
19 have been paid."

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