

1                   HB376  
2                   127649-1  
3                   By Representative Merrill  
4                   RFD: Agriculture and Forestry  
5                   First Read: 29-MAR-11

2

3

4

5

6

7

8 SYNOPSIS: This bill would replace references to the  
9 "national bureau of standards" with the "National  
10 Institute of Standards and Technology (NIST)"  
11 regarding the standards for weights and measures  
12 used in this state.

13 This bill would delete certain language that  
14 authorizes the commissioner to enter certain  
15 premises to test weights and measures.

16 This bill would authorize the Board of  
17 Agriculture and Industries to adopt rules relative  
18 to labeling and packaging pursuant to the Standards  
19 of NIST to implement either dual inch-pound or  
20 metric labeling or solely metric labeling  
21 descriptions for certain business transactions as  
22 indicated by market demand.

23 This bill would require the use of  
24 inch-pound or metric labeling or solely metric  
25 labeling on the packaging of certain commodities.

26 This bill would delete certain requirements  
27 for the regulation of milk and cream bottles and

1                   containers, as well as weights and measures and  
2                   delivery of coal, coke, or charcoal.

3                   This bill would delete certain requirements  
4                   precluding the sale of cornmeal, grits, or flour in  
5                   anything other than five to 200 pound packages.

6                   This bill would delete the prohibition of  
7                   selling ice by any manner other than weight and the  
8                   requirement that a standard liquid measure be used  
9                   for the sale of oil at retail.

10

11                   A BILL

12                   TO BE ENTITLED

13                   AN ACT

15                   Relating to weights and measures; to amend Sections  
16                   8-16-2, 8-16-3, 8-16-4, 8-16-5, 8-16-7, 8-16-15, 8-16-56,  
17                   8-16-90, 8-16-93, 8-16-94, and 8-16-101, Code of Alabama 1975,  
18                   to reference the National Institute of Standards and  
19                   Technology (NIST) regarding the standards for weights and  
20                   measures in this state; to delete outdated language related to  
21                   the duties of the Commissioner of Agriculture and Industries;  
22                   to authorize the Commissioner of Agriculture and Industries to  
23                   adopt rules relating to dual inch-pound or metric labeling or  
24                   solely metric labeling for certain business transactions; to  
25                   require the use of inch-pound and metric-labeling descriptions  
26                   or solely metric labeling on the packaging of certain  
27                   commodities; and to repeal Sections 8-16-95, 8-16-96, 8-16-97,

1 8-16-98, 8-16-99, 8-16-100, 8-16-102, 8-16-103, 8-16-104, and  
2 8-16-105, Code of Alabama 1975, to repeal certain requirements  
3 relating to the sale of certain items by weighing.

4 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

5 Section 1. Sections 8-16-2, 8-16-3, 8-16-4, 8-16-5,  
6 8-16-7, 8-16-15, 8-16-56, 8-16-90, 8-16-93, 8-16-94, and  
7 8-16-101, Code of Alabama 1975, are amended to read as  
8 follows:

9 "§8-16-2.

10 "There is but one unit or The standard measure of  
11 length and surface, ~~one of~~ weight, ~~one of~~ capacity for liquid  
12 substances, and ~~one of~~ capacity for dry substances throughout  
13 this state, ~~which must~~ shall be in conformity with the  
14 standard measure of length, surface, weight, and capacity  
15 established by the National Institute of Standards and  
16 Technology (NIST) under the authority granted to the NIST by  
17 Congress. Any firm, association, corporation, or person  
18 selling, offering, or exposing for sale any commodity by  
19 weight or measure which does not correspond with ~~such~~ this  
20 standard or measure is guilty of a misdemeanor.

21 "§8-16-3.

22 "The standards of weights and measures received from  
23 the United States ~~under a resolution of Congress approved June~~  
24 ~~14, 1836~~, and ~~such~~ new weights and measures ~~as shall be~~  
25 received from the United States as standard weights and  
26 measures in addition thereto or in renewal thereof, and ~~such~~  
27 weights and measures as shall be procured by the state in

1       conformity therewith and certified by the ~~national bureau of~~  
2       standards National Institute of Standards and Technology  
3       (NIST) shall be the state standards by which all state,  
4       county, and municipal standards of weights and measures shall  
5       be tried, proved, and sealed.

6               "§8-16-4.

7               "All contracts made within this state for any work  
8       to be done or for anything to be sold or delivered must be  
9       construed to have been according to the standard of weight and  
10       measure ascertained by Congress, ~~unless the parties stipulate~~  
11       ~~to the contrary through the authority Congress granted for the~~  
12       regulation and maintenance of the standards and weights and  
13       measures rules to the National Institute of Standards and  
14       Technology (NIST).

15               "§8-16-5.

16               "(a) The state standards of weights and measures  
17       shall be kept by the Commissioner of Agriculture and  
18       Industries in a safe and suitable place in his office, from  
19       which they shall not be removed except for repairs.

20               "(b) With respect to the state standards of weights  
21       and measures, the Commissioner of Agriculture and Industries  
22       shall have the following duties:

23               "(1) He shall maintain such standards in good order.

24               "(2) He shall replace such standards as are  
25       incorrect and purchase such additional standards as shall be  
26       necessary to complete and make up a complete standard of  
27       weights and measures.

1                         "(3) He shall purchase such apparatus as shall be  
2 found necessary to a proper prosecution of the work of the  
3 office, to be known as working standards.

4                         "(4) He shall compare such working standards with  
5 the state standards at such times as he shall deem necessary  
6 to prove the accuracy of the working standards; and

7                         "(5) He shall keep a record of all standards and  
8 other apparatus belonging to the state for the purposes of  
9 this chapter.

10                         "(6) The commissioner shall maintain traceability of  
11 the state standards to the ~~national bureau of standards~~  
12 National Institute of Standards and Technology (NIST).

13                         "(c) Weights and measures that are traceable to the  
14 U.S. prototype standards supplied by the federal government,  
15 or approved as being satisfactory by the ~~national bureau of~~  
16 ~~standards~~ National Institute of Standards and Technology  
17 (NIST), shall be the state primary standards of weights and  
18 measures, and shall be maintained in such calibration as  
19 prescribed by the ~~national bureau of standards~~ NIST. All  
20 secondary standards may be prescribed by the commissioner and  
21 shall be verified upon their initial receipt, and as often  
22 thereafter as deemed necessary by the commissioner.

23                         "§8-16-7.

24                         "(a) When not otherwise provided by law, the  
25 Commissioner of Agriculture and Industries within the state,  
26 the county sealer within the county and the city sealer within  
27 the city shall have the power and it shall be their duty to

1 inspect, test, try, and ascertain if they are correct all  
2 weights, measures, and weighing or measuring devices kept,  
3 offered, or exposed for sale, sold, used, or employed in  
4 proving the size, quantity, extent, area, or measurement of  
5 quantities, things, produce, or articles for distribution or  
6 consumption purchased or offered or submitted for sale, hire,  
7 or reward, in computing any charge for services rendered on  
8 the basis of weight or measure or in determining weight or  
9 measure when a charge is made for such determination.

10                 "(b) They shall have the power to, and shall from  
11 time to time, weigh or measure and inspect packages or amounts  
12 of commodities of whatsoever kind kept for the purpose of  
13 sale, offered, or exposed for sale, sold, or in the process of  
14 delivery in order to determine whether the same contain the  
15 amount represented and whether they are offered for sale or  
16 sold in a manner in accordance with the law.

17                 "(c) They shall, at least once each year and as much  
18 oftener as they may deem necessary, see that all weights,  
19 measures, and weighing or measuring devices used are correct.

20                 "(d) ~~They may, for the purpose above mentioned and~~  
21 ~~in the general performance of their official duties, at any~~  
22 ~~reasonable time, enter and go into or upon, without formal~~  
23 ~~warrant, any stand, place, building, or premises or stop any~~  
24 ~~vendor, peddler, junk dealer, coal wagon, ice wagon, delivery~~  
25 ~~wagon, or any person whatsoever and require him, if necessary,~~  
26 ~~to proceed to some place which the local sealer may specify~~  
27 ~~for the purpose of making the proper test.~~

(e) (d) Whenever the Commissioner of Agriculture or Industries or a local sealer of weights and measures finds a violation of the statutes relating to weights and measures, he shall cause the violator to be prosecuted.

"§8-16-15.

"(a) The Board of Agriculture and Industries ~~shall~~ have the right and power to may do all of the following:

(1) adopt Adopt and promulgate all reasonable and necessary rules and regulations for the better enforcement of the provisions of law relative to weights and measures and the sale of commodities, things, or service by weight or measure,-.

"(2) Require the labeling and packaging of commodities, things, or service by weight or measure to comply with the National Institute of Standards and Technology (NIST) to implement either the dual inch-pound and metric-labeling descriptions or metric-only labeling for all retail and wholesale business transactions, all foreign and domestic trade and commerce, and for all commodities, things, or services produced by state and local governments, as determined by business and market demand rather than government oversight.

"(3) and to establish Establish a fee payable annually by all individuals or entities subject to this section not to exceed one hundred fifty dollars (\$150) for reimbursement of expenses incurred in the enforcement of this section which shall be deposited into the Agricultural Fund of the State Treasury. The annual inspection fee for those

1 individuals and entities utilizing measuring devices measuring  
2 30 pounds or less shall be based upon a sliding scale broken  
3 into 5 categories based upon the total dollar volume of each  
4 individual or entity with the minimum rate not to exceed  
5 twenty-five dollars (\$25) and the maximum not to exceed one  
6 hundred fifty dollars (\$150).

7                         "(b) The board shall prescribe specifications as to  
8 the type of make-up and reasonable variations or tolerances  
9 for all weights, measures, and weighing and measuring devices  
10 used, offered, exposed for sale, sold, or given away in the  
11 state.

12                         "(c) Any weight, measure, or weighing or measuring  
13 device which does not comply with these specifications or does  
14 not conform with the state's standards within such tolerances  
15 shall be a false and incorrect weight, measure, or weighing or  
16 measuring device.

17                         "(d) The board shall prescribe reasonable rules and  
18 regulations for the submission of samples and the examination  
19 of type and approval or disapproval of all types of weights or  
20 measures or weighing or measuring devices used, offered, or  
21 exposed for sale or given away in the state.

22                         "§8-16-56.

23                         "(a) The Commissioner of Agriculture and Industries  
24 shall prescribe the form of weight certificate to be used by  
25 all public weighmasters in this state.

26                         "(b) Such The certificate shall state thereon the  
27 kind of commodity, produce or article, the number of units of

1 the same, the date of the receipt of the commodity, produce or  
2 article, the owner, agent or consignee, the total weight of  
3 the commodity, produce or article, ~~the vessel, railroad, team,~~  
4 ~~truck or other means~~ the method of transportation by which the  
5 commodity, produce or article was received, any trade or other  
6 mark thereon and such other information as may be necessary to  
7 distinguish or identify the commodity, produce or article from  
8 a like kind.

9 "(c) No certificate other than the one prescribed in  
10 this section shall be used by any public weighmaster in this  
11 state, and when so made and properly signed, such certificates  
12 shall be a *prima facie* evidence of such weights.

13 "§8-16-90.

14 "Any person who, by ~~himself or his servant or~~ agent,  
15 or as ~~the servant or~~ agent of another person, shall offer or  
16 expose for sale, sell, use in the buying or selling of any  
17 commodity or thing or for hire or reward or in the computation  
18 of any charge for services rendered on the basis of weight or  
19 measure when a charge is made for such determination, retain  
20 in his possession a false weight or measure or weighing or  
21 measuring device or any tool or appliance used in connection  
22 therewith which has not been sealed by the Commissioner of  
23 Agriculture and Industries or by a local sealer of weights and  
24 measures within one year, shall dispose of any condemned  
25 weight, measure, or weighing or measuring device contrary to  
26 law, remove any tag placed thereon by the commissioner or a  
27 local sealer, who shall sell or offer or expose for sale less

1 than the quantity he represents of any commodity, thing or  
2 service, shall take or attempt to take more than the quantity  
3 he represents when as the buyer he furnishes the weight,  
4 measure or weighing or measuring device by means of which the  
5 amount of any commodity, thing or service is determined, who  
6 shall keep for the purpose of sale, offer, expose for sale or  
7 sell any commodity in a manner contrary to law, who shall  
8 violate any provision of this chapter for which a specific  
9 penalty has not been provided or who shall sell, offer or  
10 expose for sale or use or have in his possession for the  
11 purpose of using or selling any device or instrument to be  
12 used to, or calculated to, falsify any weight or measure,  
13 shall be guilty of a misdemeanor.

14 "§8-16-93.

15 "(a) It shall be unlawful to keep for the purpose of  
16 sale, offer or expose for sale, or sell any commodity in  
17 package form unless the net quantity of the contents is  
18 plainly and conspicuously marked on the outside of the package  
19 in terms of weight, measure, or numerical count; provided,  
20 however, that reasonable using either dual inch-pound and  
21 metric labeling or metric-only labeling. Reasonable variations  
22 or tolerances shall be permitted, and that these reasonable  
23 variations and tolerances shall be established by rules and  
24 regulations made and promulgated by the State Board of  
25 Agriculture and Industries; and provided further, that this  
26 section shall not be construed to apply to those commodities

1                   ~~in package form, the manner of sale of which is specifically~~  
2                   ~~regulated by the provisions of other sections of this chapter.~~

3                   "(b) The words "in package form," as used in this  
4                   section, shall be construed to include a commodity in a  
5                   package, carton, case, can, box, barrel, bottle, phial or  
6                   other receptacle or in coverings or wrappings of any kind put  
7                   up by the manufacturer, or put up prior to the order of the  
8                   commodity by the vendor, which may be labeled, branded,  
9                   stenciled or otherwise marked or which may be suitable for  
10                   labeling, branding, stenciling or marking otherwise, making  
11                   one complete package of the commodity. The words "in package  
12                   form" shall be construed to include both the wholesale and the  
13                   retail package. "Package," as used in this section, does not  
14                   include any container in which are packed or contained  
15                   packages of a smaller size of a commodity, but the provisions  
16                   of this section apply only to the container directly including  
17                   the commodity.

18                   "§8-16-94.

19                   "(a) Whenever any commodities shall be sold or  
20                   delivered and no special written contract or agreement shall  
21                   be made to the contrary, if sold or authorized to be sold by  
22                   the bushel or barrel, ~~said the~~ bushel or barrel of such  
23                   commodities shall be the weight per bushel or barrel as is  
24                   generally recognized and accepted in the marketplace, and ~~the~~  
25                   ~~fractional part of the bushel or barrel shall be the~~  
26                   ~~corresponding fractional part of the weight per bushel or~~  
27                   ~~b~~arrel as is generally recognized and accepted in the

marketplace for such commodity shall include either dual inch-pound and metric labeling or metric-only labeling for the weight .

"(b) All such commodities shall be bought or sold by actual weight unless otherwise agreed to in writing between the seller and buyer; provided, however, that any of such commodities may be sold by numerical count; and provided further, that turnips, kale, mustard and spinach salad and other vegetables customarily sold by the bunch may be sold by the bunch, unless those bunches are sold by weight.

"(c) The Commissioner of Agriculture and Industries, as provided under the provisions of Section 2-2-16, is authorized and empowered to promulgate rules and regulations concerning minimum weights per bushel or barrel or other type container for the sale of commodities, as is needed for the standardization of the sale of such commodities in the marketplace using either dual inch-pound and metric labeling or metric-only labeling for the weight.

"§8-16-101.

"(a) Except as otherwise provided in this article or when sold in the original standard container, all fruit, nuts, vegetables and grain shall be sold at retail by ~~avoirdupois weight or numerical count~~ using either dual inch-pound and metric labeling or by metric-only labeling for the weight.

"(b) The words "original standard container," as used in this section, shall mean and include only barrels, boxes, baskets, hampers or similar containers, the dimensions

1 or capacity of which are established by regulations of the  
2 State Board of Agriculture and Industries, the contents of  
3 which have not been removed or repacked by the retailer and  
4 upon which is plainly and conspicuously marked the net  
5 quantity of the contents ~~thereof~~ in terms of weight, measure,  
6 or numerical count by using either dual inch-pound and metric  
7 labeling or by metric-only labeling for the weight.

8 "(c) This section shall not apply to the sale by the  
9 bunch of fresh beets, onions, turnips, carrots, and other  
10 similar vegetables usually and customarily sold by the bunch,  
11 unless those bunches are sold by weight."

12 Section 2. Sections 8-16-95, 8-16-96, 8-16-97,  
13 8-16-98, 8-16-99, 8-16-100, 8-16-102, 8-16-103, 8-16-104, and  
14 8-16-105, Code of Alabama 1975, are repealed.

15 Section 3. This act shall become effective on the  
16 first day of the third month following its passage and  
17 approval by the Governor, or its otherwise becoming law.