

## CHAPTER 98.

## WEIGHTS AND MEASURES.

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**Cross Reference:** See definitions in 93.01.

**98.01 Public standards.** The weights and measures and the scales and beams, received from the United States under a resolution of congress, approved June 14, 1836, and such new weights and measures and scales and beams in addition thereto or in renewal thereof, and such as shall be made under the direction of the state department of agriculture in conformity therewith, and certified to by the national bureau of standards shall be the state standards.

**98.02 Standards; supervision; tests.** (1) **CUSTODY OF STANDARDS; COMPARISON OF CITY STANDARDS.** The state department of agriculture shall take charge of the standards adopted by section 98.01 as the standards of the state; cause them to be kept in a fire-proof building belonging to the state, from which they shall not be removed except for repairs or for certification; and take all other necessary precautions for their safekeeping. The department shall maintain the state standards in good order and shall submit them once in ten years to the national bureau of standards for certification. The department shall keep a seal which shall be so formed as to impress the letters "Wis." upon the weights and measures, scales, and beams sealed by it, and it shall correct the standards of the several cities, and as often as once in five years, compare the same with those in its possession, and shall seal the same when tried and proved to be in conformity to the state standards.

(2) **GENERAL SUPERVISION; TESTING OF STANDARDS.** The department shall have and keep a general supervision of the weights and measures and the weighing and measuring devices of the state, and in use in the state. It or its inspectors by its direction shall, upon the written request of any citizen, firm, or corporation, or educational institution of the state, test or calibrate weights, measures, weighing or measuring devices, and instruments or apparatus used as standards in this state.

(3) **TESTING FOR STATE INSTITUTIONS.** The department, or its inspectors by its direction, shall at least once annually test all scales, weights and measures used in checking the receipt or disbursement of supplies in every institution under the jurisdiction of the state department of public welfare, state board of health and superintendent of public instruction; and report in writing its findings to such state agency and to the executive officer of the institution concerned; and at the request of such officer appoint in writing one or more employes, then in the actual service of such institution, who shall act as special deputies for the purpose of checking the receipt and disbursement of supplies.

(4) **RECORD AND REPORT.** The department shall keep a complete record of the standards, balances, and other apparatus belonging to the state. The department shall as soon as practicable after the thirtieth day of June in each even-numbered year make to the governor a report of the work done by the department. The department, or its deputy or inspectors by its direction, shall inspect all the standards used by the cities at least once in each two years and shall keep a record of the same.

(5) **SUPERVISION OF LOCAL SEALERS; REGULATIONS.** The department, or its inspectors by its direction, shall at least once in each 2 years visit the various cities of the state in order to inspect the work of the local sealers; and in the performance of such duties, it or its inspectors by its direction may inspect the weights, measures, balances, or any weight or measuring appliance of any person, firm, or corporation and shall have the

same powers as the local sealer of weights and measures. The department shall issue from time to time, regulations for the guidance of all sealers, and the said regulations shall govern the procedure to be followed by the aforesaid officers in the discharge of their duties. In said regulations it shall prescribe the amount of tolerance to be allowed, and may make reasonable regulations regarding the varieties or kinds of devices, attachments or parts entering into the construction or installation of weights and measures or weighing or measuring appliances which shall have for their object the tendency to secure correct results in the use of such appliances. The specifications, tolerances and regulations for commercial weighing and measuring devices recommended by the national bureau of standards shall be applicable in Wisconsin except as modified by department regulation.

(6) TEST MEASURES, PACKAGES AND CONTAINERS. In all territory within this state, except in cities subject to the provisions of section 98.04, the department shall have the power, except as otherwise provided in sections 126.20, 126.21 and 126.25, and in sections 196.16 and 196.17 of the statutes, to inspect, test, try and ascertain if they are correct, all weights, measures of weighing or measuring devices kept, offered or exposed for sale, or sold, and it shall be its duty to inspect, test, try and ascertain if they are correct, all weights, scales, beams, measures of every kind, instruments or mechanical devices for measurement, and tools, appliances or accessories connected with any or all such instruments or measurements used or employed within said territory by any proprietor, agent, lessee or employe in determining the size, quantity, extent, area or measurement of quantities, things, produce, or articles of any kind offered for distribution, consumption, transportation, sale, barter, exchange, hire or award. The department shall have the power to, and shall from time to time by its agents, inspectors, or sealers, weigh or measure and inspect packages or amounts of commodities of whatsoever kind, kept for the purpose of sale, or exposed for sale, sold, or in the process of delivery, in order to determine whether the same contains the amounts represented and whether they are offered for sale or sold in the manner in accordance with law.

**History:** 1953 c. 45; 1957 c. 97.

98.03 City standards. Each city appointing a sealer under section 98.04 shall procure and shall keep at all times a complete set of weights and measures, scales, and beams in exact conformity to the state standards, except that they may be made of such materials as the department may direct; weights and measures, scales, and beams having been tried and accurately proved by it shall be sealed and certified to by the department, and shall be deposited with the city sealer as public standards. Whenever such city shall neglect for six months so to do, the city clerk, on notification and request by the department, shall provide such standards and cause the same to be so tried, proved, sealed, certified, and deposited at the expense of the city.

98.04 City sealers. (1) There shall be a city sealer of weights and measures in all cities having a population of more than 5,000 inhabitants according to the last official United States census, without counting inmates of any state penal institution or insane hospital therein situated. Any city under 5,000 inhabitants may adopt the same by a majority vote of the members of the common council. Such action may be repealed by a like vote of the common council. The city sealer shall be appointed by the mayor from a list to be furnished by the state or local civil service board under the rules of said board, except that in cities of the fourth class he shall be appointed as determined by the city council. He shall be paid a salary to be fixed by the board or body authorized to fix the salaries of city officials, and shall be provided with suitable office quarters in said city, and no fees shall be charged by him or by the city for inspection or testing of weights, measures or weighing or measuring devices.

(2) Except as otherwise provided in sections 126.20, 126.21 and 126.25, and in sections 196.16 and 196.17, the city sealer shall within his city have the power to inspect, test, try, and ascertain if they are correct, all weights, measures, or weighing or measuring devices, kept, offered, or exposed for sale or sold, and it shall be his duty to inspect, test, try, and ascertain if they are correct, all weights, scales, beams, measures of every kind, instruments, or mechanical devices for measurement, and tools, appliances, or accessories connected with any or all such instruments or measurements, used or employed within the city by any proprietor, agent, lessee or employe in determining the size, quantity, extent, area, or measurement of quantities, things, produce, or articles of any kind offered for distribution, consumption, transportation, sale, barter, exchange, hire, or award. The city sealer shall have the power to and shall from time to time weigh or measure and inspect packages or amounts of commodities of whatsoever kind kept for the purpose of sale, offered or exposed for sale, sold or in the process of delivery, in order to determine whether the same contain the amounts represented, and whether they be offered for sale or sold in a manner in accordance with law.

(3) He shall, at least once in each year or as much oftener as he may deem necessary,

see that all weights, measures, and weighing and measuring apparatus used in the city are correct and that the same are in compliance with the regulations issued by the department. He may for the purpose above mentioned, and in the general performances of his official duties, with or without formal warrant, enter or go in or upon any stand, place, building, or premises; or may stop any vendor, peddler, junk dealer, coal wagon, ice wagon, or any dealer whatsoever, for the purpose of making the proper tests.

(4) Whenever the city sealer finds a violation of the statutes relating to weights and measures, he shall cause the violator to be prosecuted. Whenever the sealer compares weights and measures and finds that they correspond or causes them to correspond with the standards in his possession, and with the regulations issued by the department, he shall seal or mark the same with appropriate devices to be approved by the department. The sealer shall condemn and seize and may destroy incorrect weights and measures and weighing or measuring instruments which cannot be repaired; and such as are incorrect and yet may be repaired, he shall mark or tag as "condemned for repairs" in a manner prescribed by the department.

(5) The city sealer shall keep a complete record of the work done by him and shall make a quarterly report to the mayor, which report shall be filed with the city clerk, and a quarterly report duly sworn to, to the department, these quarterly reports to cover the three-month periods beginning July first, October first, January first, and April first, respectively, and to be submitted not later than twenty days following the expiration of the period covered by the report.

(6) The city sealer of weights and measures shall forthwith on his appointment execute and file an official bond, with sureties approved by the appointing power.

(7) Nothing contained in sections 98.01 to 98.16, inclusive, shall be construed as prohibiting cities subject to the provision of this section from enforcing ordinances regulating weights and measures, heretofore or hereafter enacted not in conflict with said sections or the regulations of the department issued in pursuance thereof; nor as prohibiting cities from employing city sealers of weights and measures to perform other public services not inconsistent with their duties as sealers of weights and measures, with or without extra compensation, as determined and fixed by the city; provided, that where such services are rendered to another city department, the cost of such services be charged to the city department receiving same.

(8) CITY AND VILLAGE SEALERS. The word "city" as used in ss. 98.02 to 98.08 shall be construed to include villages.

**History:** 1953 c. 45.

**98.05 Appropriation.** The salaries and expenses of city sealers shall be paid from the city treasuries, respectively.

**98.06 Sealers in state at large.** In all territory not within cities subject to the provisions of section 98.04 the inspectors of weights and measures appointed or designated by the department shall act as sealers of weights and measures, with like authority and duties as prescribed for city sealers in section 98.04.

**98.07 Sealer's liability.** If any sealer of weights and measures shall neglect to perform any duty imposed by law or shall prove and seal any weight, measure, scale or beam by any public standard which shall not have been tried, proved and sealed as prescribed by this chapter he shall forfeit for each such offense \$10.

**98.08 Police powers of sealers.** (1) There is hereby conferred upon the department, its inspectors, and all sealers of weights and measures, police power; such inspector and sealers shall be provided by the department with suitable badges or insignia of authority and in the exercise of their functions shall exhibit the same, upon demand, to any person questioning their powers, and they are hereby empowered and authorized to make arrests, with or without formal warrant, of any person or persons violating the provisions of any statute relating to weights and measures.

**98.09 Weight and ton defined.** When any commodity shall be sold by weight it shall be understood to mean the net weight, and all contracts concerning goods or commodities sold by weight shall be construed accordingly unless such construction would be manifestly inconsistent with the special agreement of the parties contracting. When any commodity is sold by the ton it shall be understood to mean the net weight of twenty hundred avoirdupois pounds unless such construction would be manifestly inconsistent with the special agreement of the parties contracting.

**98.10 Dry commodity standards.** (1) Whenever any of the articles or commodities mentioned in this section shall be sold by the bushel, or fractional part thereof, and no special agreement as to the weight thereof shall be made in writing, the measure thereof shall be ascertained by avoirdupois weight, and shall be computed as follows:

- (2) Sixty pounds for a bushel of wheat, peas, potatoes, clover seed, beans, alfalfa, or alsike;
- (4) Fifty-six pounds for a bushel of Indian corn, rye, lima beans, wrinkled peas, flaxseed, rutabagas, or tomatoes;
- (5) Fifty-four pounds for a bushel of sweet potatoes;
- (6) Fifty pounds for a bushel of corn meal, rape seed, millet seed, beets, green cucumbers, rye meal, carrots, buckwheat, hickory nuts, onions or fine salt;
- (7) Forty-eight pounds for a bushel of barley, peaches, pears, or Hungarian grass seed;
- (8) Fourteen pounds for a bushel of blue grass seed or redtop seed;
- (9) Forty-six pounds for a bushel of castor beans;
- (10) Forty-five pounds for a bushel of timothy seed or rough rice;
- (11) Forty-four pounds for a bushel of hemp seed, parsnips, apples, or sea island cotton seed;
- (12) Forty-two pounds for a bushel of turnips;
- (13) Thirty pounds for a bushel of string or green beans and for green peas in the pod;
- (14) Fourteen pounds for a bushel of spinach;
- (15) Forty-six pounds for a bushel of oranges;
- (16) Thirty-five pounds for a bushel of cranberries;
- (17) Thirty-four pounds for a bushel of barley malt;
- (18) Thirty-three pounds for a bushel of dried peaches;
- (19) Thirty-two pounds for a bushel of oats or onion sets;
- (20) Thirty pounds for a bushel of upland cotton seed;
- (21) Twenty-five pounds for a bushel of dried apples;
- (22) Twenty pounds for a bushel of bran or shorts;
- (23) Seventy pounds for a bushel of coarse salt or lime;
- (24) Eighty pounds for a bushel of unslaked lime;
- (25) Eight pounds for a bushel of plastering hair;
- (26) And two thousand two hundred pounds for a cord of hemlock bark;
- (27) For a fractional part of a bushel a like fractional part of the above weights shall be required.

(28) All dry commodities not otherwise specified in this section shall be bought or sold only by standard dry measures, standard weight, or numerical count except where parties otherwise agree in writing.

**98.11 Standard bushel.** The bushel in struck measure shall contain two thousand one hundred fifty and forty-two hundredths cubic inches. The half bushel and the parts thereof shall correspond in capacity to that of the bushel and shall be the standard measure for fruits, vegetables, and other dry commodities customarily sold by heaped measure; and in measuring such commodities, the half bushel or other smaller measure shall be heaped as high as may be without special effort or design.

**98.12 Standard milk bottles.** For the sale of milk, cream and other fluid milk products at retail no bottle or container shall be used unless its capacity is one-half pint, one pint, one-third quart, one quart, one-half gallon, or one gallon.

**History:** 1951 c. 223; 1953 c. 45; 1955 c. 532.

**98.13 Babcock test; samples; paying check.** (1) In the use of the Babcock test all persons shall use only the standard Babcock testing glassware, which complies with the following specifications, to wit:

- (a) Milk pipettes shall have a capacity of 17.6 cubic centimeters.
- (b) Milk test bottles shall have a calibrated neck with a capacity equivalent to 0.2 cubic centimeter for each one per cent marked thereon; and after January 1, 1948, only bottles with a total per cent graduation of 8 shall be used.
- (c) Cream test bottles shall receive a charge of either 9 grams or 18 grams. The 9 gram bottle shall only be used with a 9 gram charge and the 18 gram bottle shall only be used with an 18 gram charge. The calibrated neck of the 9 gram bottle shall have a capacity equivalent to 0.1 cubic centimeter for each one per cent marked thereon and the calibrated neck of the 18 gram bottle shall have a capacity equivalent to 0.2 cubic centimeter for each one per cent marked thereon.

(d) This section shall not be construed to prohibit the use of the Mojonnier or ether extraction test methods.

(e) No other basis of milk fat measure where milk or cream is purchased by or sold to dairy plants when the value of said milk or cream is determined by per cent of milk fat content or by the Babcock test shall be used.

- (2) In sampling cream or milk from which composite tests are to be made to deter-

mine the per cent of butter fat contained therein, no such sample or sampling shall be lawful unless a sample be taken from each weighing and the quantity thus used shall be proportioned to the total weight of the cream or milk tested, and each weighing of milk or cream shall be thoroughly agitated immediately before taking a sample to insure a sample truly representing the aggregate from which taken.

(3) All purchasers of milk or cream from the producer, when using the Babcock test as a standard to determine the value of any milk or cream received or bought by such purchaser, shall, when paying for such milk or cream, include an itemized statement to each patron showing the daily number of pounds of milk delivered, the total amount of butter-fat content or test, transportation costs, and other charges and deductions for the period of time for which payment is made; except that the daily weights need not be shown on such statement if weight slips are furnished daily to producers.

(4) Whenever milk is sold under an agreement, express or implied, that the value of the same shall be determined by its proportion of butter fat, the price to be paid shall be based on a three and five-tenths per cent butter fat standard.

(5) Every cheesemaker, creamery operator and condensary operator or any other person or firm buying cream or milk based on butter fat content shall provide two sets of composite sample bottles, and shall retain tested samples in good condition, for five days after testing, to enable the patron owning such sample to have a retest made by an experienced and competent tester of the state department of agriculture. Such retest shall be used as the basis on which pay checks shall be computed. Upon request of any such patron or cheesemaker, or both, it shall be the duty of such department to furnish such tester to make such retest. Where separate tests are made daily of each patron's milk or cream, the unused portion of the original samples of any particular day's milk or cream shall be retained in good condition for retesting whenever five per cent or more of the patrons furnishing milk or cream to such firm or person so request.

**History:** 1951 c. 223.

**98.14 Standardization of Babcock pipettes.** (1) All bottles and pipettes used in measuring milk or milk products for making determination of the per cent of fat in said milk or milk products shall have clearly blown or otherwise permanently marked in the side of the bottle or pipette the word "Sealed," and in the side of the pipette or the side or bottom of the bottle the name, initials, or trade-mark of the manufacturer and his designating number, which designating number shall be different for each manufacturer and may be used in identifying bottles. The designating number shall be furnished by the department upon application by the manufacturer and upon the filing by the manufacturer of a bond in the sum of one thousand dollars with sureties to be approved by the attorney-general, conditioned upon conformance with the requirements of this section. A record of the bonds furnished, the designating number, and to whom furnished, shall be kept in the office of the department.

(2) Any manufacturer who sells Babcock milk, cream or butter test bottles or milk pipettes, to be used in this state, that do not comply with the provisions of this section shall suffer the penalty of five hundred dollars to be recovered by the attorney general in an action against the offender's bondsmen, to be brought in the name of the people of the state. No dealer shall use, for the purpose of determining the per cent of milk fat in milk or milk products, any bottles or pipettes that do not comply with the provisions of this section relating thereto.

(3) The department shall prescribe specifications with which the glassware mentioned in this section shall comply. The unit of graduation for all Babcock glassware shall be the true cubic centimeter or the weight of one gram of distilled water at four degrees centigrade.

(4) Sealers of weights and measures are not required to seal Babcock milk, cream or butter test bottles or milk pipettes marked as in this section provided, but they shall from time to time make tests of individual bottles used by the various firms in the territory over which they have jurisdiction in order to ascertain whether the above provisions are being complied with and they shall report immediately to the department violations found.

**98.145 Licensing of milk and cream testers.** (1) To secure fair and accurate tests to producers and manufacturers for the determination of the basis of payment or for settlement for such milk or cream, or for the purpose of official inspection, or for the making of records of dairy production, persons making such milk fat tests shall be licensed by the department as herein provided.

(2) No person shall engage as a tester of milk or cream to determine its value for payment or for the purpose of official inspection or for records of dairy production for the purposes described above unless he holds a license issued by the department; but no such license shall be required of a duly licensed cheesemaker or buttermaker. Such license

shall be renewed annually. Each application for milk tester license or renewal thereof shall be accompanied by a fee of \$2. Each application shall be made upon forms provided by the department.

(3) To qualify for a milk and cream tester's license the applicant shall furnish satisfactory evidence of good moral character as certified by 2 responsible references who have known the applicant for at least one year and shall give proof of ability to perform the necessary duties to the satisfaction of the department by satisfactorily passing a written examination pertaining to milk and cream sampling and care of samples and use of the Babcock test or such other test method as may be approved by the department; and by actual demonstration in the laboratory of his ability to determine accurately the milk fat content of milk and cream including special emphasis on the handling and testing of composite samples of milk and cream.

(4) Unless provision is made for the testing of milk or cream by a duly licensed tester as provided herein, no dairy plant shall receive any milk or cream unless at least one employe is a milk and cream tester licensee who shall be responsible for the care of samples and the testing of milk and cream and who shall be regularly assigned to the duty of making such tests.

(5) This section shall not be construed to require the licensing of city or village sanitary or dairy inspectors.

**History:** 1953 c. 581.

Constitutionality discussed and administration considered. 42 Atty. Gen. 221.

**98.146 Licensing milk weighers and samplers.** (1) All persons taking weights and samples of milk in bulk tanks or measuring milk in bulk tanks to determine weight, on the farm premises where such milk is produced, shall be licensed by the department under this section, and no person who is not so licensed shall engage in such activities.

(2) Each application for a license under this section or renewal thereof shall be made on forms provided by the department and shall be accompanied by a fee of \$2. Such license shall be renewed annually. The applicant shall furnish satisfactory evidence of good moral character and shall give proof of ability to engage in such weighing and sampling to the satisfaction of the department by satisfactorily passing a written examination pertaining to such activities. Any person holding a tester's license under s. 98.145, or who is engaged in weighing and sampling milk in bulk tanks, either as an employe of a purchaser or receiver of milk in bulk tanks, or as the owner of a bulk tank truck and route, on August 21, 1957, shall be licensed under this section without examination if he satisfies the department that he is qualified for such license.

(3) No dairy plant shall receive any milk required to be weighed and sampled by a licensee under this section unless it has been so weighed and sampled.

**History:** 1957 c. 548.

**98.15 To underread or overread unlawful.** It shall be unlawful for any person, by himself, his servant or agent or as the servant or agent of another to falsely manipulate or underread or overread or make any false determination by the Babcock test or any other contrivance used for determining the quality or value of milk or cream delivered to a creamery, cheese factory, or condensed milk factory, or when sold or purchased.

**98.16 Standard barrels, crates and boxes.** (1) A barrel for liquids shall contain thirty-one and one-half gallons, and a hogshead two barrels.

(2) A barrel for beer, ale, porter or other similar fermented liquors shall contain thirty-one gallons, each gallon to contain two hundred thirty-one cubic inches; a half barrel, fifteen and one-half gallons; a quarter barrel, seven and three-fourths gallons; an eighth barrel, three and seven-eighths gallons. The capacities of the barrel and its subdivisions enumerated above shall apply to all containers in which beer, ale, porter or other similar fermented liquors are commonly sold, known as barrels, kegs, casks, or any other container made of staves, hoops and flatheads. Reasonable tolerances shall be prescribed by the department for the containers above designated.

(3) (a) A barrel of wheat flour, rye flour, buckwheat flour, self-rising wheat flour, phosphated wheat flour, bromated flour, enriched flour, enriched self-rising flour, enriched bromated flour, corn flour, corn meals, hominy and hominy grits measured by weight shall contain 200 pounds.

(b) All sales of any of the commodities mentioned in paragraph (a) in containers of less than one barrel shall be in containers of net avoirdupois weights of 2 pounds, 5 pounds, 10 pounds, 25 pounds, 50 pounds and 100 pounds.

(4) A barrel for potatoes or other vegetables shall be the same as the standard barrel for apples or pears or other fruit as provided in subsection (6) of this section.

(5) A barrel of unslaked lime shall contain two hundred pounds.

(6) The standard barrel for apples or pears or other fruit, unless otherwise specifically defined, shall have an interior capacity of seven thousand and fifty-six cubic inches;

and shall not be less than twenty-six inches between the heads inside; the diameter of the heads shall be seventeen and one-eighth inches, including the beveled edge; the outside bilge or circumference shall be not less than sixty-four inches, the thickness of the staves being four-tenths of an inch; provided, however, that any barrel of a different form, but of an interior capacity of seven thousand and fifty-six cubic inches, shall be a legal barrel.

(7) The standard barrel for cranberries shall measure not less than twenty-five and one-quarter inches between the heads inside; the diameter of the heads shall be sixteen and one-quarter inches, including the beveled edge; the outside bilge, or circumference, shall measure not less than fifty-eight and one-half inches, the thickness of the staves being four-tenths of an inch. But any barrel or different form, but of the same interior capacity shall be considered a legal barrel.

(8) A standard crate, box or basket for apples, pears, plums, peaches, and other fruits not secondarily contained in quart or other boxes within such crate, box or basket, shall have an interior capacity of two thousand one hundred fifty cubic inches exclusive of cover.

(9) A bushel crate of cranberries or blueberries shall have an interior capacity of one bushel struck measure.

(10) All sales of blackberries, blueberries, currants, gooseberries, raspberries, cherries, strawberries, and similar berries in quantities of less than one bushel shall be by the quart, pint, or half-pint, dry measure, and all berry boxes or baskets sold, used, or offered for sale within the state shall be of the interior capacity of not less than one quart, pint or half-pint, dry measure. In addition to the penalty prescribed in section 98.26, the illegal boxes and baskets and the fruit therein contained may be confiscated in case of violation of the provisions of this subsection.

(11) All sales of fresh fruits or vegetables in containers of less than one bushel dry capacity measure shall be in containers of the standard capacity of one quart, two quarts, three quarts, four quarts, five quarts, six quarts, eight quarts, sixteen quarts or twenty-four quarts standard dry measure, and such receptacles shall in fact contain the full capacity of such fresh fruits or vegetables, or if in other than standard containers such receptacles for fresh fruits or vegetables shall be plainly and conspicuously marked to indicate the true net weight, measure or numerical count of such fruits or vegetables.

(13) All contracts for the sale of apples, pears, cranberries, or other fruits, potatoes or other vegetables, by the barrel or crate, unless it is otherwise expressly stipulated in writing, shall be construed to mean barrels or crates of the capacity prescribed in subsections (4), (6), (7), (8) and (9) of this section.

(14) (a) Nothing in this section shall be construed as preventing the sale and shipment into other states of barrels, crates, berry boxes, or baskets of other capacities than those herein specified, nor as prohibiting the use of barrels, crates, berry boxes, or baskets of other capacities than those herein specified for the sale and shipment therein into other states of any of the commodities named or designated in this section.

(b) The requirement of subsection (3) (b) shall not apply to (1) the retailing of flours, meals, hominy and hominy grits direct to the consumer from bulk stock, or (2) the sale of flours and meals to commercial bakers or blenders or for export in containers of more than 100 pounds, or (3) specialty cake and pancake-making flours packed in containers the net contents of which are less than 3 pounds, or (4) the exchange of wheat for flour by mills grinding for toll.

(c) The requirement of section 98.04 (4) as to sealing by the sealer of weights and measures shall not be construed as applying to the barrels, crates, boxes, baskets or other containers designated in this section.

**98.17 Hop boxes.** The standard size of boxes used for picking hops shall be not exceeding three feet long, one and one-half feet wide and two feet deep, inside measure.

**98.18 Standard for grain.** No person shall sell, buy or receive in store any grain at any weight or measure per bushel other than the standard weight or measure per bushel fixed by law.

**History:** 1951 c. 223.

**98.19 Grain tester, how used.** No person shall determine the grade of any grain which is brought or received in store at any mill, elevator, warehouse or storehouse by the use of any grain tester that is not sealed in accordance with the United States standard of measure and which sealer is not in accordance therewith at the time it is used. When grain is tested at the instance of the seller the tester shall be filled by pouring the grain into it from a scoop or a similar vessel, and when the tester is filled it shall be struck or leveled with 3 zigzag movements of a straight edge. Any person who shall violate the

provisions of this section and thereby cheat or defraud the seller or buyer of any grain shall be punished as is provided in section 98.26 (1).

**History:** 1951 c. 223.

**98.20 Cotton duck or canvas; weight and quality; branding.** (1) That for the purposes of this section cotton duck or canvas shall be deemed to include all cotton duck or canvas, whether single filling, double filling, roll or wide duck.

(2) That for the purposes of this section, the equivalent of thirty-six inches in length by twenty-nine inches in width or seven and one-fourth square feet of cotton duck or canvas shall constitute a yard, and an ounce shall be one-sixteenth part of a pound avoirdupois.

(3) Any person, company or corporation who shall manufacture for sale or who may offer or expose for sale any cotton duck or canvas, or any article other than clothing and wearing apparel composed or made in whole or in part of cotton duck or canvas, shall distinctly and durably stamp, brand, or mark thereon the true and correct weight of such cotton duck or canvas, by ounces per yard, together with a description by name of any filler or other preparation placed in or on said cotton duck or canvas since its manufacture.

(4) It shall be unlawful for any person or corporation, either individually or in any representative capacity, to carry for sale, sell or endeavor to sell any cotton duck or canvas as herein defined, or any articles other than clothing and wearing apparel, composed or made in whole or in part of any cotton duck or canvas without having marked thereon the true and correct weight of said canvas or cotton duck by ounces per yard, together with a description by name of any filler or other preparation placed in or on said cotton duck or canvas since its manufacture, or to misstate, misrepresent, or conceal the true weight of said canvas or cotton duck by ounces per yard, or to misstate, misrepresent, or conceal the existence of any filler or other preparation placed in or on said cotton duck or canvas since its manufacture.

(5) It shall be unlawful for any person or corporation either individually or in representative capacity, selling, carrying for sale or endeavoring to sell any awnings, paulins, wagon covers, tents, grain and hay covers, stable or tent tops to misstate, or misrepresent, or conceal the true and correct size and dimensions thereof.

(6) It shall be unlawful for any person to deface, mutilate, obscure, conceal, efface, cancel, or remove any mark provided for by this section or cause, or permit the same to be done with intent to mislead, deceive, or to violate any of the provisions of this section.

**98.21 Bread, standard loaves.** (1) All bread manufactured, procured, made or kept for sale, offered or exposed for sale, or sold, in the form of loaves for use or consumption within this state, shall be one of the following weights and no other, namely, one pound, one and one-half pounds, or multiples of one pound avoirdupois weight, provided, however, that a variation or tolerance of one and one-fourth ounces in excess or one and one-fourth ounces in deficiency per pound from the weights provided for in this section be allowed in the weight of individual loaves of bread; and the weight of individual loaves of bread shall be held to be the average of at least ten loaves of the same approximate weight and same manufacturer, if that number is available at the time of weighing in any place where bread is manufactured, procured, made or kept for sale, offered or exposed for sale, or sold. If ten loaves are not available, then the weight of individual loaves shall be held to be the average of all available loaves of the same approximate weight and same manufacturer, at the time of weighing in any place where bread in loaves is manufactured, procured, made or kept for sale, offered or exposed for sale, or sold, but in no case shall said number be less than five.

(2) The provisions of this section shall not apply to rolls, buns, biscuits, crackers and similar articles weighing less than four ounces avoirdupois each, nor to stale bread, provided that such bread be conspicuously marked "stale bread," or placed in a container conspicuously marked "stale bread," and sold as and for stale bread.

(3) No person, firm or corporation, by himself, his servant or agent, or as the servant or agent of another person, firm or corporation, shall manufacture, procure, make or keep for sale, offer or expose for sale, or sell, bread in the form of loaves of weights other than provided for in subsection (1) of this section and in excess of the tolerances provided for therein.

(4) City sealers of weights and measures, co-ordinately with the state department of agriculture, shall enforce the provisions of this section.

**98.22 Inspection of fuel deliveries.** It shall be unlawful to sell or offer to sell in this state any coal, charcoal, or coke in any other manner than by weight. No person, firm, or corporation shall deliver any coal, charcoal, or coke without each such delivery

being accompanied by a delivering ticket and a duplicate thereof, on each of which shall be in ink, or other indelible substance, distinctly expressed in pounds, the gross weight of the load, the tare of the delivery vehicle, and the quantity, or quantities of coal, charcoal, or coke, contained in the cart, wagon, or other vehicle used in such deliveries, with the name of the purchaser thereof, and the name of the dealer from whom purchased. One of these tickets shall be surrendered to the sealer of weights and measures upon his demand, for his inspection, and this ticket or weight slip issued by the sealer when the sealer desires to retain the original shall be delivered to said purchaser of said coal, or his agent or representative, at the time of the delivery of the fuel; and the other ticket shall be retained by the seller of the fuel. When the buyer carries away the purchase, a delivery ticket showing the actual number of pounds delivered over to the purchaser must be given to the purchaser at the time the sale is made.

**98.23 Cheese purchased at wholesale to be weighed before delivery.** Every person, firm or corporation that purchases or engages in the business of purchasing cheese in quantities of fifty pounds or more, in this state shall, in all cases except where otherwise agreed by express contract, correctly weigh or cause to be correctly weighed, each and every box or package thereof, at or before the time that such cheese shall be delivered to the purchaser, or to any common carrier for the purchaser for shipment, and every such person, firm or corporation shall make payment for all such cheese purchased, according to the weight so ascertained, and at the price or amount therefor agreed upon with the owner or vendor of such cheese at the time of such delivery, except for such cheese as shall be found inferior quality by a test thereof made at or before the time of such delivery.

**98.24 Sale of growing crops; weighing; quality.** Any person, firm or corporation transacting business in this state, that shall enter into any contract for the purchase of any crop that is not ready for immediate delivery, shall in all cases weigh, or cause to be weighed, the crop so purchased, at or before the time such crop is delivered to the purchaser, or to a common carrier at the direction of the purchaser for shipment, and every such person, firm or corporation shall ultimately make payment in full for all of the crop so purchased according to the weight so ascertained and at the price or amount specified in the contract, without regard to the quality or condition of such crop or portions thereof at the time of delivery, unless any inferior quality or unsound condition of such crop shall be due to the negligence or wilful act of the vendor, subsequent to such purchase, and in case any purchaser shall fail or refuse to comply with his contract as provided in this section, the vendor, in any action prosecuted by him to recover for any crop sold to such purchaser, shall recover as damages for such failure or refusal, double the contract price of such crop at the weight thereof when ready for delivery and offered to or accepted by the purchaser.

See note to 121.64, citing *Heuer v. Wiese*, 270 W. 541, 72 NW (2d) 332.

**98.25 False weights and measures.** (1) Any person, who by himself or his agent or servant, or as the agent or servant of another, shall use in the buying or selling of any commodity or thing, or for hire or award, or retain in his possession, any false weight or measure or weighing device; or who shall sell or offer for sale, or have in his possession for the purpose of selling, any false weight or measure or weighing or measuring device, or any device or instrument to be used or calculated to falsify any weight or measure; or who shall use or retain in his possession, except as expressly provided by statute, any weight or measure or weighing or measuring device which has not been sealed by a sealer of weights and measures within one year; or who shall sell, or offer or expose for sale, or keep for the purpose of sale a lesser quantity of any commodity than he represents such quantity to be, or shall take or attempt to take more than the quantity he represents, when, as buyer, he furnishes the weight, measure, or weighing or measuring device, by means of which the amount of commodity is determined; or who shall sell or offer or expose for sale, or keep for the purpose of sale any commodity in a manner contrary to law; or who shall violate any provisions of sections 98.01 to 98.24, for which a specific penalty has not been prescribed; shall be punished as in section 98.26 (1).

(2) Or any person who wilfully, with intent to cheat or defraud the buyer or seller of electric current, gas, water or steam, shall make or cause to be made or aid in the making of any electric conductor, gas pipe, water pipe, steam pipe, or other instrument or contrivance, or any connection as to conduct or supply or intended to conduct or supply electric current, gas, water or steam to any lamp or motor or machine or burner or orifice or appliance from which such electricity, gas, water or steam may be consumed or utilized, without passing through or being registered by a meter; or any person who shall wilfully use a false meter for the measurement of electric current, gas, water or steam in the buying or selling of the same; or who shall wilfully obstruct or interfere with the working of any

meter used for such purposes, so as to cause or be intended to cause a false registration of the amount of electric current, water, gas, or steam consumed with the intent to cheat or defraud the seller or buyer of such electric current, gas, water or steam, shall be punished by imprisonment in the county jail not more than one year or by a fine not exceeding \$500; but in case the amount of damages occasioned by such cheat or fraud shall not exceed \$20, he shall be punished as in section 98.26 (1); and in computing the amount of damages occasioned, the value of such electric current, water, gas or steam shall be the regular current price therefor, charged to the consumer by the seller thereof.

(3) Sections 98.01 to 98.24 do not prohibit the use, in good faith, of any unsealed weight or measure or weighing or measuring device acquired by any person after the sealer's last visit to him for the purpose of sealing his weights and measures, or inspecting any sealed weight or measure or weighing or measuring device in his possession after the expiration of one year next after the last inspection and sealing thereof, provided the person has notified the city sealer, in cities subject to the provisions of section 98.04, or, in all other cases, the department, in writing, signed by him, of the fact that he has such weight or measure or weighing or measuring device, giving the number and a general description thereof, and the place where it may be found, and has received a written and signed acknowledgment of said notice from the city sealer or the department.

**History:** 1951 c. 223.

**Cross Reference:** For prohibitions relative to electricity, gas, water and steam, similar to those in 98.25 (2), see 939.32 and 943.20.

**98.26 Penalties.** (1) Any person, who shall violate any of the provisions of this chapter for which a specific penalty is not prescribed shall be fined not to exceed \$200 or imprisoned in the county jail not to exceed 6 months or both.

(2) Whoever in any manner whatsoever impersonates or hinders the state department of agriculture or any inspector or any sealer of weights and measures, in the performance of their official duties shall be punished as in subsection (1).

**History:** 1951 c. 223.