

HOUSE BILL NO. 711

INTRODUCED BY COBB, JACOBSON

BY REQUEST OF THE LEGISLATIVE AUDIT COMMITTEE

IN THE HOUSE

FEBRUARY 15, 1989

INTRODUCED AND REFERRED TO COMMITTEE  
ON BUSINESS & ECONOMIC DEVELOPMENT.

FIRST READING.

FEBRUARY 18, 1989

COMMITTEE RECOMMEND BILL  
DO PASS. REPORT ADOPTED.

PRINTING REPORT.

FEBRUARY 21, 1989

SECOND READING, DO PASS.

ENGROSSING REPORT.

FEBRUARY 22, 1989

THIRD READING, PASSED.  
AYES, 97; NOES, 3.

TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 28, 1989

INTRODUCED AND REFERRED TO COMMITTEE  
ON BUSINESS & INDUSTRY.

FIRST READING.

MARCH 15, 1989

COMMITTEE RECOMMEND BILL BE  
CONCURRED IN. REPORT ADOPTED.

MARCH 17, 1989

SECOND READING, CONCURRED IN.

MARCH 20, 1989

THIRD READING, CONCURRED IN.  
AYES, 48; NOES, 0.

RETURNED TO HOUSE.

MARCH 21, 1989

IN THE HOUSE

RECEIVED FROM SENATE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 711  
2 INTRODUCED BY Lobb Jacobsen  
3 BY REQUEST OF THE LEGISLATIVE AUDIT COMMITTEE  
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE  
6 AUTHORITY OF THE DEPARTMENT OF COMMERCE RELATED TO PRODUCT  
7 TESTING, INSPECTING NONCOMMERCIAL WEIGHTS AND MEASURES, AND  
8 INSPECTING COMMERCIAL TIME MEASURING DEVICES; DELETING THE  
9 REQUIREMENT THAT THE STATE STANDARD WEIGHTS BE SUBMITTED TO  
10 THE NATIONAL BUREAU OF STANDARDS EVERY 10 YEARS FOR TESTING;  
11 CHANGING REFERENCES FROM THE NATIONAL BUREAU OF STANDARDS TO  
12 THE NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY; AND  
13 AMENDING SECTIONS 30-12-101 THROUGH 30-12-103, 30-12-201,  
14 30-12-202, AND 30-12-207, MCA."

15  
16 STATEMENT OF INTENT

17 A statement of intent is required for this bill because  
18 it grants rulemaking authority to the department of commerce  
19 to implement and carry out provisions of the Montana Code  
20 Annotated relating to inspection of packages. The  
21 legislature intends that the department adopt rules or amend  
22 existing rules in a manner that will provide that packages  
23 or amounts of commodities are tested to see that they  
24 contain the amounts represented to ensure that the public  
25 may rely on representations of the amounts of commodities

1 being sold. It is contemplated that the rules adopted  
2 provide, among other things, that the department establish  
3 procedures and schedules for random inspection of packages  
4 and amounts of commodities throughout the state and that the  
5 rules provide for the random selection of test sites  
6 throughout the state.  
7

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

9 **Section 1.** Section 30-12-101, MCA, is amended to read:  
10 "30-12-101. Definitions. Unless the context requires  
11 otherwise, in parts 1 through 5 of this chapter the  
12 following definitions apply:

13 (1) "Barrel", when used in connection with fermented  
14 liquor, means a unit of 31 gallons.

15 (2) "Commerce", "trade", or "commercial" means a  
16 monetary or value exchange between parties for merchandise  
17 or services.

18 (2)(3) "Commodity in package form" means a commodity  
19 put up or packaged in any manner in advance of sale in units  
20 suitable for either wholesale or retail sale, exclusive,  
21 however, of any auxiliary shipping container enclosing  
22 packages that individually conform to the requirements of  
23 parts 1 through 5. An individual item or lot of any  
24 commodity not in package form as defined in this section,  
25 but on which there is marked a selling price based on an

1 established price per unit of weight or of measure, is a  
2 commodity in package form.

3 ~~{3}~~{4} "Consumer package" or "package of consumer  
4 commodity" means a commodity in package form that is  
5 customarily produced or distributed for sale through retail  
6 sales agencies or instrumentalities for consumption by  
7 individuals or use by individuals for the purposes of  
8 personal care or in the performance of services ordinarily  
9 rendered in or about the household or in connection with  
10 personal possessions.

11 ~~{4}~~{5} "Cord", when used in connection with wood  
12 intended for fuel purposes, means the amount of wood that is  
13 contained in a space of 128 cubic feet when the wood is  
14 ranked and well stowed.

15 ~~{5}~~{6} "Department" means the department of commerce  
16 provided for in Title 2, chapter 15, part 18.

17 ~~{6}~~{7} "Intrastate commerce" means any commerce or  
18 trade that is begun, carried on, and completed wholly in  
19 this state, and the phrase "introduced into intrastate  
20 commerce" defines the time and place at which the first sale  
21 and delivery of a commodity is made in this state, the  
22 delivery being made either directly to the purchaser or to a  
23 common carrier for shipment to the purchaser.

24 ~~{7}~~{8} "Nonconsumer package" or "package of nonconsumer  
25 commodity" means a commodity in package form other than a

1 consumer package and particularly a package designed solely  
2 for industrial or institutional use or for wholesale  
3 distribution only.

4 ~~{8}~~{9} "Person" includes individuals, partnerships,  
5 corporations, companies, societies, and associations.

6 ~~{9}~~{10} "Sell" and "sale" include but are not limited to  
7 barter and exchange.

8 ~~{10}~~{11} "Ton" means a unit of 2,000 pounds avoirdupois  
9 weight.

10 ~~{11}~~{12} "Weight", when used in connection with any  
11 commodity, means net weight.

12 ~~{12}~~{13} "Weight", "measure", and "weights and measures"  
13 mean all weights and measures of every kind, instruments and  
14 devices for weighing and measuring, and any appliances and  
15 accessories associated with those instruments and devices.  
16 The terms do not include meters for the measurement of  
17 electricity, gas (natural or manufactured), or water when  
18 they are operated in a public utility system. None of the  
19 provisions of parts 1 through 5 apply to electricity, gas,  
20 or water meters operated in a public utility system or to  
21 any appliances or accessories associated with them. The  
22 terms do not include time measuring devices by which  
23 products or services are sold."

24 **Section 2.** Section 30-12-102, MCA, is amended to read:  
25 **"30-12-102. Systems of weights and measures. The system**

1 of weights and measures in customary use in the United  
 2 States and the metric system of weights and measures are  
 3 jointly recognized, and either one or both of these systems  
 4 ~~shall~~ may be used for all commercial purposes in the state  
 5 of Montana. The definitions of basic units of weight and  
 6 measure, the tables of weight and measure, and weights and  
 7 measures equivalents as published by the national ~~bureau--of~~  
 8 ~~standards institute of standards and technology~~ are  
 9 recognized and shall govern weighing and measuring equipment  
 10 and transactions in the state."

11 **Section 3.** Section 30-12-103, MCA, is amended to read:

12 "30-12-103. State standards of weight and measure.  
 13 Those weights and measures in conformity with the standards  
 14 of the United States as have been supplied to the state by  
 15 the federal government or otherwise obtained by this state  
 16 for use as state standards ~~shall~~ are, when they have been  
 17 certified as being satisfactory for use as such by the  
 18 national ~~bureau--of--standards~~ institute of standards and  
 19 technology, be the state standards of weight and measure.  
 20 The state standards ~~shall~~ must be kept in a safe and  
 21 suitable place in the office or laboratory of the  
 22 department. They ~~shall~~ may not be removed from there except  
 23 for repairs or for certification; ~~--and--they--shall--be~~  
 24 ~~submitted-at-least-once-in-10-years-to-the--national--bureau~~  
 25 ~~of-standards-for-certification."~~

1 **Section 4.** Section 30-12-201, MCA, is amended to read:

2 "30-12-201. General powers and duties of department.

3 The department ~~shall--have~~ has the custody of the state  
 4 standards of weight and measure and of the other standards  
 5 and equipment provided for by parts 1 through 5 and shall  
 6 keep accurate records of them. The department shall enforce  
 7 the provisions of parts 1 through 5. It shall supervise the  
 8 weights and measures used in commerce or trade that are  
 9 offered for sale, sold, or in use in this state."

10 **Section 5.** Section 30-12-202, MCA, is amended to read:

11 "30-12-202. Specific powers and duties of department --  
 12 rules. (1) The department shall adopt from time to time  
 13 reasonable rules for the enforcement of parts 1 through 5,  
 14 which rules have the effect of law. These rules may  
 15 include:

- 16 (a) schedules of fees for testing and certification;
- 17 (b) standards of net weight, measure, or count and
- 18 reasonable standards of fill for any commodity in package
- 19 form;
- 20 (c) rules governing the technical and reporting
- 21 procedures to be followed and the report and record forms
- 22 and marks of approval and rejection to be used by the
- 23 department in the discharge of its official duties;
- 24 (d) exemptions from the sealing or marking requirements
- 25 of 30-12-209 with respect to weights and measures of a

1 character or size that sealing or marking would be  
2 inappropriate, impracticable, or damaging to the apparatus  
3 involved; and

4 (e) rules governing the voluntary registration of  
5 servicemen and service agencies.

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

12 (a) that are not accurate;

13 (b) that are not reasonably permanent in their  
14 adjustment or will not repeat their indications correctly;  
15 or

16 (c) that facilitate the perpetration of fraud.

17 (3) The specifications, tolerances, and other technical  
18 requirements for commercial weighing and measuring devices,  
19 together with amendments thereto, as recommended by the  
20 national ~~bureau--of--standards~~ institute of standards and  
21 technology and published in national ~~bureau--of--standards~~  
22 institute of standards and technology Handbook 44 and  
23 supplements thereto, or in any publication revising or  
24 superseding Handbook 44, are the specifications, tolerances,  
25 and other technical requirements for commercial weighing and

1 measuring devices of this state, except insofar as  
2 specifically modified, amended, or rejected by a rule issued  
3 by the department.

4 (4) An apparatus ~~shall-be~~ is considered to be "correct"  
5 when it conforms to all applicable requirements adopted as  
6 specified in this section. Other apparatus ~~shall-be~~ are  
7 considered to be "incorrect".

8 **Section 6.** Section 30-12-207, MCA, is amended to read:

9 "30-12-207. Inspection of packages. (1) The department  
10 shall ~~from-time-to--time~~ adopt by rule and implement a  
11 schedule to weigh or measure and inspect packages or amounts  
12 of commodities kept, offered, or exposed for sale, sold, or  
13 in the process of delivery to determine whether they contain  
14 the amounts represented and whether they be are kept,  
15 offered, or exposed for sale, or sold in accordance with  
16 law. The schedule adopted must provide for random  
17 inspection of packages and commodities at randomly selected  
18 inspection sites. When those packages or amounts of  
19 commodities are found not to contain the amounts represented  
20 or are found to be kept, offered, or exposed for sale in  
21 violation of law, the department may order them off sale and  
22 may so mark or tag them as to show them to be illegal. In  
23 carrying out the provisions of this section, the department  
24 may employ recognized sampling procedures under which the  
25 compliance of a given lot of packages will be determined on

1 the basis of the result obtained on a sample selected from  
2 and representative of that lot.

3 (2) A person may not:

4 (a) sell or keep, offer, or expose for sale, in  
5 intrastate commerce, any package or amount of commodity that  
6 has been ordered off sale or marked or tagged as provided in  
7 this section unless the package or amount of commodity has  
8 been brought into full compliance with all legal  
9 requirements; or

10 (b) dispose of any package or amount of commodity that  
11 has been ordered off sale or marked or tagged as provided in  
12 this section and that has not been brought into compliance  
13 with legal requirements, in any manner, except with the  
14 specific approval of the department."

15 NEW SECTION. **Section 7.** Noncommercial inspections --  
16 fees. Subject to the availability of resources and upon  
17 payment of a fee commensurate with the costs of inspection,  
18 the department may inspect noncommercial weighing and  
19 measuring devices. Fees collected under this section must be  
20 deposited in the state general fund.

21 NEW SECTION. **Section 8.** Extension of authority. Any  
22 existing authority to make rules on the subject of the  
23 provisions of [this act] is extended to the provisions of  
24 [this act].

25 NEW SECTION. **Section 9.** Codification instruction.

1 [Section 7] is intended to be codified as an integral part  
2 of Title 30, chapter 12, part 2, and the provisions of Title  
3 30, chapter 12, part 2, apply to [section 7].

-End-

APPROVED BY COMM. ON BUSINESS  
AND ECONOMIC DEVELOPMENT

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3 BY REQUEST OF THE LEGISLATIVE AUDIT COMMITTEE  
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8 INSPECTING COMMERCIAL TIME MEASURING DEVICES; DELETING THE  
9 REQUIREMENT THAT THE STATE STANDARD WEIGHTS BE SUBMITTED TO  
10 THE NATIONAL BUREAU OF STANDARDS EVERY 10 YEARS FOR TESTING;  
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15 (2) "Commerce", "trade", or "commercial" means a  
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19 put up or packaged in any manner in advance of sale in units  
20 suitable for either wholesale or retail sale, exclusive,  
21 however, of any auxiliary shipping container enclosing  
22 packages that individually conform to the requirements of  
23 parts 1 through 5. An individual item or lot of any  
24 commodity not in package form as defined in this section,  
25 but on which there is marked a selling price based on an



1 established price per unit of weight or of measure, is a  
2 commodity in package form.

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10 personal possessions.

11 ~~†4†~~(5) "Cord", when used in connection with wood  
12 intended for fuel purposes, means the amount of wood that is  
13 contained in a space of 128 cubic feet when the wood is  
14 ranked and well stowed.

15 ~~†5†~~(6) "Department" means the department of commerce  
16 provided for in Title 2, chapter 15, part 18.

17 ~~†6†~~(7) "Intrastate commerce" means any commerce or  
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19 this state, and the phrase "introduced into intrastate  
20 commerce" defines the time and place at which the first sale  
21 and delivery of a commodity is made in this state, the  
22 delivery being made either directly to the purchaser or to a  
23 common carrier for shipment to the purchaser.

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25 commodity" means a commodity in package form other than a

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3 distribution only.

4 ~~†8†~~(9) "Person" includes individuals, partnerships,  
5 corporations, companies, societies, and associations.

6 ~~†9†~~(10) "Sell" and "sale" include but are not limited to  
7 barter and exchange.

8 ~~†10†~~(11) "Ton" means a unit of 2,000 pounds avoirdupois  
9 weight.

10 ~~†11†~~(12) "Weight", when used in connection with any  
11 commodity, means net weight.

12 ~~†12†~~(13) "Weight", "measure", and "weights and measures"  
13 mean all weights and measures of every kind, instruments and  
14 devices for weighing and measuring, and any appliances and  
15 accessories associated with those instruments and devices.  
16 The terms do not include meters for the measurement of  
17 electricity, gas (natural or manufactured), or water when  
18 they are operated in a public utility system. None of the  
19 provisions of parts 1 through 5 apply to electricity, gas,  
20 or water meters operated in a public utility system or to  
21 any appliances or accessories associated with them. The  
22 terms do not include time measuring devices by which  
23 products or services are sold."

24 **Section 2.** Section 30-12-102, MCA, is amended to read:

25 **"30-12-102. Systems of weights and measures. The system**

1 of weights and measures in customary use in the United  
 2 States and the metric system of weights and measures are  
 3 jointly recognized, and either one or both of these systems  
 4 ~~shall~~ may be used for all commercial purposes in the state  
 5 of Montana. The definitions of basic units of weight and  
 6 measure, the tables of weight and measure, and weights and  
 7 measures equivalents as published by the national bureau--of  
 8 ~~standards~~ institute of standards and technology are  
 9 recognized and shall govern weighing and measuring equipment  
 10 and transactions in the state."

11 **Section 3.** Section 30-12-103, MCA, is amended to read:

12 "30-12-103. State standards of weight and measure.  
 13 Those weights and measures in conformity with the standards  
 14 of the United States as have been supplied to the state by  
 15 the federal government or otherwise obtained by this state  
 16 for use as state standards ~~shall~~ are, when they have been  
 17 certified as being satisfactory for use as such by the  
 18 national bureau--of--standards institute of standards and  
 19 technology, be the state standards of weight and measure.  
 20 The state standards ~~shall~~ must be kept in a safe and  
 21 suitable place in the office or laboratory of the  
 22 department. They ~~shall~~ may not be removed from there except  
 23 for repairs or for certification~~7--and--they--shall--be~~  
 24 ~~submitted-at-least-once-in-10-years-to-the--national--bureau~~  
 25 ~~of-standards-for-certification."~~

1 **Section 4.** Section 30-12-201, MCA, is amended to read:

2 "30-12-201. General powers and duties of department.

3 The department ~~shall--have~~ has the custody of the state  
 4 standards of weight and measure and of the other standards  
 5 and equipment provided for by parts 1 through 5 and shall  
 6 keep accurate records of them. The department shall enforce  
 7 the provisions of parts 1 through 5. It shall supervise the  
 8 weights and measures used in commerce or trade that are  
 9 offered for sale, sold, or in use in this state."

10 **Section 5.** Section 30-12-202, MCA, is amended to read:

11 "30-12-202. Specific powers and duties of department --  
 12 rules. (1) The department shall adopt from time to time  
 13 reasonable rules for the enforcement of parts 1 through 5,  
 14 which rules have the effect of law. These rules may  
 15 include:

16 (a) schedules of fees for testing and certification;

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

20 (c) rules governing the technical and reporting  
 21 procedures to be followed and the report and record forms  
 22 and marks of approval and rejection to be used by the  
 23 department in the discharge of its official duties;

24 (d) exemptions from the sealing or marking requirements  
 25 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 of servicemen and service agencies.

(2) These rules shall include specifications, tolerances, and other technical requirements for weights and measures subject to inspection and testing under 30-12-205, designed to eliminate from use, without prejudice to apparatus that conforms as closely as practicable to the official standards, those:

(a) that are not accurate;

(b) that are not reasonably permanent in their adjustment or will not repeat their indications correctly; or

(c) that facilitate the perpetration of fraud.

(3) The specifications, tolerances, and other technical requirements for commercial weighing and measuring devices, together with amendments thereto, as recommended by the national ~~bureau--of--standards~~ institute of standards and technology and published in national ~~bureau--of--standards~~ institute of standards and technology Handbook 44 and supplements thereto, or in any publication revising or superseding Handbook 44, are the specifications, tolerances, and other technical requirements for commercial weighing and

measuring devices of this state, except insofar as specifically modified, amended, or rejected by a rule issued by the department.

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

**Section 6.** Section 30-12-207, MCA, is amended to read:

**"30-12-207. Inspection of packages.** (1) The department shall ~~from-time-to--time~~ adopt by rule and implement a schedule to weigh or measure and inspect packages or amounts of commodities kept, offered, ~~or~~ exposed for sale, sold, or in the process of delivery to determine whether they contain the amounts represented and whether they ~~be~~ are kept, offered, ~~or~~ exposed for sale, or sold in accordance with law. The schedule adopted must provide for random inspection of packages and commodities at randomly selected inspection sites. When those packages or amounts of commodities are found not to contain the amounts represented or are found to be kept, offered, or exposed for sale in violation of law, the department may order them off sale and may so mark or tag them as to show them to be illegal. In carrying out the provisions of this section, the department may employ recognized sampling procedures under which the compliance of a given lot of packages will be determined on

1 the basis of the result obtained on a sample selected from  
2 and representative of that lot.

3 (2) A person may not:

4 (a) sell or keep, offer, or expose for sale, in  
5 intrastate commerce, any package or amount of commodity that  
6 has been ordered off sale or marked or tagged as provided in  
7 this section unless the package or amount of commodity has  
8 been brought into full compliance with all legal  
9 requirements; or

10 (b) dispose of any package or amount of commodity that  
11 has been ordered off sale or marked or tagged as provided in  
12 this section and that has not been brought into compliance  
13 with legal requirements, in any manner, except with the  
14 specific approval of the department."

15 NEW SECTION. **Section 7. Noncommercial inspections --**  
16 **fees.** Subject to the availability of resources and upon  
17 payment of a fee commensurate with the costs of inspection,  
18 the department may inspect noncommercial weighing and  
19 measuring devices. Fees collected under this section must be  
20 deposited in the state general fund.

21 NEW SECTION. **Section 8. Extension of authority.** Any  
22 existing authority to make rules on the subject of the  
23 provisions of [this act] is extended to the provisions of  
24 [this act].

25 NEW SECTION. **Section 9. Codification instruction.**

1 [Section 7] is intended to be codified as an integral part  
2 of Title 30, chapter 12, part 2, and the provisions of Title  
3 30, chapter 12, part 2, apply to [section 7].

-End-

1 *HOUSE* BILL NO. *711*  
2 INTRODUCED BY *Cobb* *Jackson*  
3 BY REQUEST OF THE LEGISLATIVE AUDIT COMMITTEE  
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE  
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23 or amounts of commodities are tested to see that they  
24 contain the amounts represented to ensure that the public  
25 may rely on representations of the amounts of commodities

1 being sold. It is contemplated that the rules adopted  
2 provide, among other things, that the department establish  
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16 monetary or value exchange between parties for merchandise  
17 or services.

18 ~~(2)~~(3) "Commodity in package form" means a commodity  
19 put up or packaged in any manner in advance of sale in units  
20 suitable for either wholesale or retail sale, exclusive,  
21 however, of any auxiliary shipping container enclosing  
22 packages that individually conform to the requirements of  
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24 commodity not in package form as defined in this section,  
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1 established price per unit of weight or of measure, is a  
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3 ~~{3}~~{4} "Consumer package" or "package of consumer  
4 commodity" means a commodity in package form that is  
5 customarily produced or distributed for sale through retail  
6 sales agencies or instrumentalities for consumption by  
7 individuals or use by individuals for the purposes of  
8 personal care or in the performance of services ordinarily  
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11 ~~{4}~~{5} "Cord", when used in connection with wood  
12 intended for fuel purposes, means the amount of wood that is  
13 contained in a space of 128 cubic feet when the wood is  
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15 ~~{5}~~{6} "Department" means the department of commerce  
16 provided for in Title 2, chapter 15, part 18.

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19 this state, and the phrase "introduced into intrastate  
20 commerce" defines the time and place at which the first sale  
21 and delivery of a commodity is made in this state, the  
22 delivery being made either directly to the purchaser or to a  
23 common carrier for shipment to the purchaser.

24 ~~{7}~~{8} "Nonconsumer package" or "package of nonconsumer  
25 commodity" means a commodity in package form other than a

1 consumer package and particularly a package designed solely  
2 for industrial or institutional use or for wholesale  
3 distribution only.

4 ~~{8}~~{9} "Person" includes individuals, partnerships,  
5 corporations, companies, societies, and associations.

6 ~~{9}~~{10} "Sell" and "sale" include but are not limited to  
7 barter and exchange.

8 ~~{10}~~{11} "Ton" means a unit of 2,000 pounds avoirdupois  
9 weight.

10 ~~{11}~~{12} "Weight", when used in connection with any  
11 commodity, means net weight.

12 ~~{12}~~{13} "Weight", "measure", and "weights and measures"  
13 mean all weights and measures of every kind, instruments and  
14 devices for weighing and measuring, and any appliances and  
15 accessories associated with those instruments and devices.  
16 The terms do not include meters for the measurement of  
17 electricity, gas (natural or manufactured), or water when  
18 they are operated in a public utility system. None of the  
19 provisions of parts 1 through 5 apply to electricity, gas,  
20 or water meters operated in a public utility system or to  
21 any appliances or accessories associated with them. The  
22 terms do not include time measuring devices by which  
23 products or services are sold."

24 **Section 2.** Section 30-12-102, MCA, is amended to read:

25 **"30-12-102. Systems of weights and measures. The system**

1 of weights and measures in customary use in the United  
 2 States and the metric system of weights and measures are  
 3 jointly recognized, and either one or both of these systems  
 4 ~~shall~~ may be used for all commercial purposes in the state  
 5 of Montana. The definitions of basic units of weight and  
 6 measure, the tables of weight and measure, and weights and  
 7 measures equivalents as published by the national bureau--of  
 8 ~~standards~~ institute of standards and technology are  
 9 recognized and shall govern weighing and measuring equipment  
 10 and transactions in the state."

11 **Section 3.** Section 30-12-103, MCA, is amended to read:

12 "30-12-103. State standards of weight and measure.  
 13 Those weights and measures in conformity with the standards  
 14 of the United States as have been supplied to the state by  
 15 the federal government or otherwise obtained by this state  
 16 for use as state standards ~~shall~~ are, when they have been  
 17 certified as being satisfactory for use as such by the  
 18 national bureau--of--standards institute of standards and  
 19 technology, be the state standards of weight and measure.  
 20 The state standards ~~shall~~ must be kept in a safe and  
 21 suitable place in the office or laboratory of the  
 22 department. They ~~shall~~ may not be removed from there except  
 23 for repairs or for certification,--and--they--shall--be  
 24 ~~submitted at least once in 10 years to the national bureau~~  
 25 ~~of standards for certification.~~"

1 **Section 4.** Section 30-12-201, MCA, is amended to read:

2 "30-12-201. General powers and duties of department.  
 3 The department ~~shall~~--have has the custody of the state  
 4 standards of weight and measure and of the other standards  
 5 and equipment provided for by parts 1 through 5 and shall  
 6 keep accurate records of them. The department shall enforce  
 7 the provisions of parts 1 through 5. It shall supervise the  
 8 weights and measures used in commerce or trade that are  
 9 offered for sale, sold, or in use in this state."

10 **Section 5.** Section 30-12-202, MCA, is amended to read:

11 "30-12-202. Specific powers and duties of department --  
 12 rules. (1) The department shall adopt from time to time  
 13 reasonable rules for the enforcement of parts 1 through 5,  
 14 which rules have the effect of law. These rules may  
 15 include:

16 (a) schedules of fees for testing and certification;

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

20 (c) rules governing the technical and reporting  
 21 procedures to be followed and the report and record forms  
 22 and marks of approval and rejection to be used by the  
 23 department in the discharge of its official duties;

24 (d) exemptions from the sealing or marking requirements  
 25 of 30-12-209 with respect to weights and measures of a

1 character or size that sealing or marking would be  
2 inappropriate, impracticable, or damaging to the apparatus  
3 involved; and

4 (e) rules governing the voluntary registration of  
5 servicemen and service agencies.

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

12 (a) that are not accurate;

13 (b) that are not reasonably permanent in their  
14 adjustment or will not repeat their indications correctly;  
15 or

16 (c) that facilitate the perpetration of fraud.

17 (3) The specifications, tolerances, and other technical  
18 requirements for commercial weighing and measuring devices,  
19 together with amendments thereto, as recommended by the  
20 national ~~bureau--of--standards~~ institute of standards and  
21 technology and published in national ~~bureau--of--standards~~  
22 institute of standards and technology Handbook 44 and  
23 supplements thereto, or in any publication revising or  
24 superseding Handbook 44, are the specifications, tolerances,  
25 and other technical requirements for commercial weighing and

1 measuring devices of this state, except insofar as  
2 specifically modified, amended, or rejected by a rule issued  
3 by the department.

4 (4) An apparatus ~~shall-be~~ is considered to be "correct"  
5 when it conforms to all applicable requirements adopted as  
6 specified in this section. Other apparatus ~~shall-be~~ are  
7 considered to be "incorrect".

8 **Section 6.** Section 30-12-207, MCA, is amended to read:

9 "30-12-207. Inspection of packages. (1) The department  
10 shall ~~from-time-to--time~~ adopt by rule and implement a  
11 schedule to weigh or measure and inspect packages or amounts  
12 of commodities kept, offered, ~~or~~ exposed for sale, sold, or  
13 in the process of delivery to determine whether they contain  
14 the amounts represented and whether they ~~be~~ are kept,  
15 offered, ~~or~~ exposed for sale, or sold in accordance with  
16 law. The schedule adopted must provide for random  
17 inspection of packages and commodities at randomly selected  
18 inspection sites. When those packages or amounts of  
19 commodities are found not to contain the amounts represented  
20 or are found to be kept, offered, or exposed for sale in  
21 violation of law, the department may order them off sale and  
22 may so mark or tag them as to show them to be illegal. In  
23 carrying out the provisions of this section, the department  
24 may employ recognized sampling procedures under which the  
25 compliance of a given lot of packages will be determined on



1 the basis of the result obtained on a sample selected from  
2 and representative of that lot.

3 (2) A person may not:

4 (a) sell or keep, offer, or expose for sale, in  
5 intrastate commerce, any package or amount of commodity that  
6 has been ordered off sale or marked or tagged as provided in  
7 this section unless the package or amount of commodity has  
8 been brought into full compliance with all legal  
9 requirements; or

10 (b) dispose of any package or amount of commodity that  
11 has been ordered off sale or marked or tagged as provided in  
12 this section and that has not been brought into compliance  
13 with legal requirements, in any manner, except with the  
14 specific approval of the department."

15 NEW SECTION. **Section 7. Noncommercial inspections --**  
16 **fees.** Subject to the availability of resources and upon  
17 payment of a fee commensurate with the costs of inspection,  
18 the department may inspect noncommercial weighing and  
19 measuring devices. Fees collected under this section must be  
20 deposited in the state general fund.

21 NEW SECTION. **Section 8. Extension of authority.** Any  
22 existing authority to make rules on the subject of the  
23 provisions of [this act] is extended to the provisions of  
24 [this act].

25 NEW SECTION. **Section 9. Codification instruction.**

1 [Section 7] is intended to be codified as an integral part  
2 of Title 30, chapter 12, part 2, and the provisions of Title  
3 30, chapter 12, part 2, apply to [section 7].

-End-

## 1 HOUSE BILL NO. 711

2 INTRODUCED BY COBB, JACOBSON

3 BY REQUEST OF THE LEGISLATIVE AUDIT COMMITTEE

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE  
6 AUTHORITY OF THE DEPARTMENT OF COMMERCE RELATED TO PRODUCT  
7 TESTING, INSPECTING NONCOMMERCIAL WEIGHTS AND MEASURES, AND  
8 INSPECTING COMMERCIAL TIME MEASURING DEVICES; DELETING THE  
9 REQUIREMENT THAT THE STATE STANDARD WEIGHTS BE SUBMITTED TO  
10 THE NATIONAL BUREAU OF STANDARDS EVERY 10 YEARS FOR TESTING;  
11 CHANGING REFERENCES FROM THE NATIONAL BUREAU OF STANDARDS TO  
12 THE NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY; AND  
13 AMENDING SECTIONS 30-12-101 THROUGH 30-12-103, 30-12-201,  
14 30-12-202, AND 30-12-207, MCA."

15  
16 STATEMENT OF INTENT

17 A statement of intent is required for this bill because  
18 it grants rulemaking authority to the department of commerce  
19 to implement and carry out provisions of the Montana Code  
20 Annotated relating to inspection of packages. The  
21 legislature intends that the department adopt rules or amend  
22 existing rules in a manner that will provide that packages  
23 or amounts of commodities are tested to see that they  
24 contain the amounts represented to ensure that the public  
25 may rely on representations of the amounts of commodities

1 being sold. It is contemplated that the rules adopted  
2 provide, among other things, that the department establish  
3 procedures and schedules for random inspection of packages  
4 and amounts of commodities throughout the state and that the  
5 rules provide for the random selection of test sites  
6 throughout the state.  
7

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

9 Section 1. Section 30-12-101, MCA, is amended to read:

10 "30-12-101. Definitions. Unless the context requires  
11 otherwise, in parts 1 through 5 of this chapter the  
12 following definitions apply:13 (1) "Barrel", when used in connection with fermented  
14 liquor, means a unit of 31 gallons.15 (2) "Commerce", "trade", or "commercial" means a  
16 monetary or value exchange between parties for merchandise  
17 or services.18 (2)(3) "Commodity in package form" means a commodity  
19 put up or packaged in any manner in advance of sale in units  
20 suitable for either wholesale or retail sale, exclusive,  
21 however, of any auxiliary shipping container enclosing  
22 packages that individually conform to the requirements of  
23 parts 1 through 5. An individual item or lot of any  
24 commodity not in package form as defined in this section,  
25 but on which there is marked a selling price based on an

1 established price per unit of weight or of measure, is a  
2 commodity in package form.

3 ~~{3}~~{4} "Consumer package" or "package of consumer  
4 commodity" means a commodity in package form that is  
5 customarily produced or distributed for sale through retail  
6 sales agencies or instrumentalities for consumption by  
7 individuals or use by individuals for the purposes of  
8 personal care or in the performance of services ordinarily  
9 rendered in or about the household or in connection with  
10 personal possessions.

11 ~~{4}~~{5} "Cord", when used in connection with wood  
12 intended for fuel purposes, means the amount of wood that is  
13 contained in a space of 128 cubic feet when the wood is  
14 ranked and well stowed.

15 ~~{5}~~{6} "Department" means the department of commerce  
16 provided for in Title 2, chapter 15, part 18.

17 ~~{6}~~{7} "Intrastate commerce" means any commerce or  
18 trade that is begun, carried on, and completed wholly in  
19 this state, and the phrase "introduced into intrastate  
20 commerce" defines the time and place at which the first sale  
21 and delivery of a commodity is made in this state, the  
22 delivery being made either directly to the purchaser or to a  
23 common carrier for shipment to the purchaser.

24 ~~{7}~~{8} "Nonconsumer package" or "package of  
25 nonconsumer commodity" means a commodity in package form

1 other than a consumer package and particularly a package  
2 designed solely for industrial or institutional use or for  
3 wholesale distribution only.

4 ~~{8}~~{9} "Person" includes individuals, partnerships,  
5 corporations, companies, societies, and associations.

6 ~~{9}~~{10} "Sell" and "sale" include but are not limited  
7 to barter and exchange.

8 ~~{10}~~{11} "Ton" means a unit of 2,000 pounds avoirdupois  
9 weight.

10 ~~{11}~~{12} "Weight", when used in connection with any  
11 commodity, means net weight.

12 ~~{12}~~{13} "Weight", "measure", and "weights and  
13 measures" mean all weights and measures of every kind,  
14 instruments and devices for weighing and measuring, and any  
15 appliances and accessories associated with those instruments  
16 and devices. The terms do not include meters for the  
17 measurement of electricity, gas (natural or manufactured),  
18 or water when they are operated in a public utility system.  
19 None of the provisions of parts 1 through 5 apply to  
20 electricity, gas, or water meters operated in a public  
21 utility system or to any appliances or accessories  
22 associated with them. The terms do not include time  
23 measuring devices by which products or services are sold."

24 **Section 2.** Section 30-12-102, MCA, is amended to read:

25 "30-12-102. Systems of weights and measures. The

system of weights and measures in customary use in the United States and the metric system of weights and measures are jointly recognized, and either one or both of these systems ~~shall~~ may be used for all commercial purposes in the state of Montana. The definitions of basic units of weight and measure, the tables of weight and measure, and weights and measures equivalents as published by the national ~~bureau of-standards~~ institute of standards and technology are recognized and shall govern weighing and measuring equipment and transactions in the state."

**Section 3.** Section 30-12-103, MCA, is amended to read:

"30-12-103. State standards of weight and measure. Those weights and measures in conformity with the standards of the United States as have been supplied to the state by the federal government or otherwise obtained by this state for use as state standards ~~shall~~ are, when they have been certified as being satisfactory for use as such by the national ~~bureau--of--standards~~ institute of standards and technology, be the state standards of weight and measure. The state standards ~~shall~~ must be kept in a safe and suitable place in the office or laboratory of the department. They ~~shall~~ may not be removed from there except for repairs or for certification,--and--they--shall--be submitted-at-least-once-in-10-years-to-the--national--bureau of-standards-for-certification."

**Section 4.** Section 30-12-201, MCA, is amended to read:

"30-12-201. General powers and duties of department.

The department ~~shall-have~~ has the custody of the state standards of weight and measure and of the other standards and equipment provided for by parts 1 through 5 and shall keep accurate records of them. The department shall enforce the provisions of parts 1 through 5. It shall supervise the weights and measures used in commerce or trade that are offered for sale, sold, or in use in this state."

**Section 5.** 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, which 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 in the discharge of its official duties;

(d) exemptions from the sealing or marking requirements of 30-12-209 with respect to weights and

1 measures of a character or size that sealing or marking  
2 would be inappropriate, impracticable, or damaging to the  
3 apparatus involved; and

4 (e) rules governing the voluntary registration of  
5 servicemen and service agencies.

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

12 (a) that are not accurate;

13 (b) that are not reasonably permanent in their  
14 adjustment or will not repeat their indications correctly;  
15 or

16 (c) that facilitate the perpetration of fraud.

17 (3) The specifications, tolerances, and other  
18 technical requirements for commercial weighing and measuring  
19 devices, together with amendments thereto, as recommended by  
20 the national bureau-of-standards institute of standards and  
21 technology and published in national bureau--of--standards  
22 institute of standards and technology Handbook 44 and  
23 supplements thereto, or in any publication revising or  
24 superseding Handbook 44, are the specifications, tolerances,  
25 and other technical requirements for commercial weighing and

1 measuring devices of this state, except insofar as  
2 specifically modified, amended, or rejected by a rule issued  
3 by the department.

4 (4) An apparatus ~~shall--be~~ is considered to be  
5 "correct" when it conforms to all applicable requirements  
6 adopted as specified in this section. Other apparatus ~~shall~~  
7 be are considered to be "incorrect".

8 **Section 6.** Section 30-12-207, MCA, is amended to read:

9 **\*30-12-207. Inspection of packages.** (1) The department  
10 shall ~~from-time-to--time~~ adopt by rule and implement a  
11 schedule to weigh or measure and inspect packages or amounts  
12 of commodities kept, offered, or exposed for sale, sold, or  
13 in the process of delivery to determine whether they contain  
14 the amounts represented and whether they be are kept,  
15 offered, or exposed for sale, or sold in accordance with  
16 law. The schedule adopted must provide for random  
17 inspection of packages and commodities at randomly selected  
18 inspection sites. When those packages or amounts of  
19 commodities are found not to contain the amounts represented  
20 or are found to be kept, offered, or exposed for sale in  
21 violation of law, the department may order them off sale and  
22 may so mark or tag them as to show them to be illegal. In  
23 carrying out the provisions of this section, the department  
24 may employ recognized sampling procedures under which the  
25 compliance of a given lot of packages will be determined on

1 the basis of the result obtained on a sample selected from  
2 and representative of that lot.

3 (2) A person may not:

4 (a) sell or keep, offer, or expose for sale, in  
5 intrastate commerce, any package or amount of commodity that  
6 has been ordered off sale or marked or tagged as provided in  
7 this section unless the package or amount of commodity has  
8 been brought into full compliance with all legal  
9 requirements; or

10 (b) dispose of any package or amount of commodity that  
11 has been ordered off sale or marked or tagged as provided in  
12 this section and that has not been brought into compliance  
13 with legal requirements, in any manner, except with the  
14 specific approval of the department."

15 NEW SECTION. **Section 7. Noncommercial inspections --**  
16 **fees.** Subject to the availability of resources and upon  
17 payment of a fee commensurate with the costs of inspection,  
18 the department may inspect noncommercial weighing and  
19 measuring devices. Fees collected under this section must be  
20 deposited in the state general fund.

21 NEW SECTION. **Section 8. Extension of authority.** Any  
22 existing authority to make rules on the subject of the  
23 provisions of [this act] is extended to the provisions of  
24 [this act].

25 NEW SECTION. **Section 9. Codification instruction.**

1 [Section 7] is intended to be codified as an integral part  
2 of Title 30, chapter 12, part 2, and the provisions of Title  
3 30, chapter 12, part 2, apply to [section 7].

-End-