

51:1-29

1/19/88

LEGISLATIVE HISTORY CHECKLIST

NJSA: 51:1-29; 59:1-29.1 (Weights and measures-- various amendments)

LAWS OF: 1987 CHAPTER: 207

Bill No: S2854

Sponsor(s): Brown

Date Introduced: December 15, 1986

Committee: Assembly: -----

Senate: Law, Public Safety and Defense

Amended during passage: Yes Amendments during passage denoted by asterisks.

Date of Passage: Assembly: June 4, 1987

Senate: May 18, 1987

Date of Approval: July 23, 1987

Following statements are attached if available:

Sponsor statement: Yes

Committee statement: Assembly No

Senate Yes

Fiscal Note: No

Veto Message: No

Message on Signing: No

Following were printed:

Reports: No

Hearings: No

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SENATE, No. 2854

STATE OF NEW JERSEY

INTRODUCED DECEMBER 15, 1986

By Senator BROWN

Referred to Committee on Law, Public Safety and Defense

AN ACT concerning weights and measures and amending R. S. 51:1-29 *and supplementing Title 51 of the Revised Statutes**

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey*:

1 1. R. S. 51:1-29 is amended to read as follows:

2 51:1-29. a. No person shall distribute, expose for sale, sell, or
3 have in his possession with intent to distribute, expose for sale or
4 sell any article or commodity in package form, unless the label
5 bears statements:

6 (1) Specifying the identity of the commodity in common terms;

7 (2) Identifying the legal name and principal place of business
8 of the manufacturer, packer or distributor. The statement shall
9 include the street address, city, state and zip code, except that the
10 street address may be omitted if it is shown in a current city direc-
11 tory or telephone directory. If a person manufactures, packs or
12 distributes a commodity in package form at a place other than his
13 principal place of business, the statement may contain the princi-
14 pal place of business address in lieu of the actual place where the
15 commodity was manufactured, packed or is to be distributed, un-
16 less that statement would be misleading. Packages packed on the
17 premises where sold shall not be required to comply with this para-
18 graph; and,

19 (3) Specifying the net quantity of the contents by weight, mea-
20 sure, count or volume as prescribed by the State superintendent.

21 b. Reasonable variations, tolerances and exemptions from the
22 requirements of subsection a. shall be permitted. The State super-
23 intendent shall by regulation fix the permitted variations, tolerances
24 and exemptions.

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Senate committee amendments adopted February 19, 1987.

25 ***[c.** No container or package in which commodities are packaged
 26 shall have a false bottom, false sidewalls, false lid, or covering, or
 27 be otherwise so constructed or filled, wholly or partially, as to
 28 facilitate the perpetration of a deception. No container or package
 29 shall be nonfunctionally slack filled, that is, filled to substantially
 30 less than its capacity for reasons other than (1) protection of the
 31 contents of the package or (2) the requirements of machines used
 32 for enclosing the contents in the package.]*

33 *c. (1) No container or package in which commodities are pack-*
 34 *aged shall have a false bottom, false sidewalls, false lid or cover-*
 35 *ing, or be otherwise so constructed or filled, wholly or partially, as*
 36 *to constitute deception. (2) No container shall be so nonfunc-*
 37 *tionally slack filled as to constitute deception. The State superin-*
 38 *tendent shall promulgate rules and regulations concerning non-*
 39 *functionally slack filled containers. As used in *paragraph (2) of**
 40 *this subsection, "nonfunctionally slack filled" means a container*
 41 *which is filled to substantially less than its capacity for reasons*
 42 *other than (a) protection of the contents of the container or (b)*
 43 *the requirements of machines used for enclosing the contents in the*
 44 *container. As used in *paragraph (2) of* this subsection, "con-*
 45 *tainer" means the immediate receptacle in which the commodity is*
 45A *enclosed.*

46 d. Any person who manufactures, packs, distributes, exposes for
 47 sale or sells any commodity in package form in violation of this
 48 section shall for the first offense be liable to a civil penalty of not
 49 less than \$50.00 nor more than \$100.00, and for a second offense to
 50 a civil penalty of not less than \$100.00 nor more than \$250.00, and
 51 for each subsequent offense to a civil penalty of not less than \$250.00
 52 nor more than \$500.00.

53 (1) No person shall be convicted of or assessed a civil penalty
 54 for a second or subsequent offense pursuant to this subsection un-
 55 less the previous conviction:

56 (a) Occurred no earlier than one year prior to the occur-
 57 rence of the second or subsequent offense; and

58 (b) Occurred at the same place of business as the second
 59 or subsequent offense. For the purposes of this paragraph,
 60 "same place of business" means identical store or outlet.

61 (2) Nothing in this subsection shall be deemed (a) to autho-
 62 rize or permit the imposition of penalties for second or subsequent
 63 offenses in conjunction with an adjudication of guilt based upon
 64 multiple counts or complaints arising from the same inspection, or
 65 (b) to mandate the imposition of penalties for a second or subse-

66 quent offense if, in the discretion of the court, the imposition of a
67 penalty for a first offense would be just and proper.

68 e. A shipment, delivery, aggregation or lot of a commodity in
69 package form may be examined for compliance with the required
70 net quantity statement for determining the acceptance or rejection
71 (off-sale action) by means of recognized sampling, statistical
72 principles and methods published by the National Bureau of
73 Standards. Packages having a minus error exceeding the Maximum
74 Allowable Variation (MAV) shall be held in violation and
75 appropriate legal action may be taken with respect to these individual
76 packages according to the provisions of this section.

77 f. Notwithstanding any provision in Title 51 of the Revised Statutes,
78 when a prosecution has been initiated against a retailer alleging a
79 violation regarding any commodity in package form, the manufacturer
80 or supplier of that package shall be substituted as the party-defendant
81 upon motion, with the consent of all parties and the consent of that
82 manufacturer or supplier, who shall agree to submit to the jurisdiction
83 of the court. If a judgment imposed against a manufacturer or supplier
84 remains unsatisfied, the State superintendent may docket that judgment
85 in the Superior Court, and may enforce that judgment in the same manner
86 as a judgment originating from the Superior Court.

1 **2. (New section) Notwithstanding any other provision of law to the
2 contrary, a person may manufacture, pack, distribute, deliver, cause to
3 be delivered, sell, expose for sale, or have in his possession with intent
4 to do any of the foregoing, a commodity in package form consisting
5 predominantly (more than 50%) of a hydrate of sodium tetraborate when
6 the net weight of the contents of the package is less than that specified
7 on its label, provided that (1) the package otherwise complies with
8 current law, (2) the package bears a statement specifying the net
9 quantity of its contents by volume, and (3) the volume of the contents
10 of the package, measured by a reproducible free-fall method, equals or
11 exceeds the volume so specified. If the National Bureau of Standards
12 has published a reproducible free-fall method for measuring the volume
13 of such a commodity, that method shall be used for this section. A
14 person may represent the price of such a commodity based upon the
15 weight specified on its label.**

1 **[2.]* *3.* This act shall take effect immediately *but shall
2 remain inoperative until the effective date of Senate Bill No. 1557
3 OCR of 1986 (now pending before the Legislature).]* *.**

LAW AND PUBLIC SAFETY—GENERAL

Amends and supplements the laws on weights and measures.

66 (b) Occurred at the same place of business as the second
 67 or subsequent offense. For the purposes of this paragraph,
 68 “same place of business” means identical store or outlet.

69 (2) Nothing in this subsection shall be deemed (a) to autho-
 70 rize or permit the imposition of penalties for second or subsequent
 71 offenses in conjunction with an adjudication of guilt based upon
 72 multiple counts or complaints arising from the same inspection, or
 73 (b) to mandate the imposition of penalties for a second or subse-
 74 quent offense if, in the discretion of the court, the imposition of a
 75 penalty for a first offense would be just and proper.

76 e. A shipment, delivery, aggregation or lot of a commodity in
 77 package form may be examined for compliance with the required
 78 net quantity statement for determining the acceptance or rejec-
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 81 Standards. Packages having a minus error exceeding the Maxi-
 82 mum Allowable Variation (MAV) shall be held in violation and
 83 appropriate legal action may be taken with respect to these indi-
 84 vidual packages according to the provisions of this section.

85 f. Notwithstanding any provision in Title 51 of the Revised Stat-
 86 utes, when a prosecution has been initiated against a retailer al-
 87 leging a violation regarding any commodity in package form, the
 88 manufacturer or supplier of that package shall be substituted as
 89 the party-defendant upon motion, with the consent of all parties
 90 and the consent of that manufacturer or supplier, who shall agree
 91 to submit to the jurisdiction of the court. If a judgment imposed
 92 against a manufacturer or supplier remains unsatisfied, the State
 93 superintendent may docket that judgment in the Superior Court,
 94 and may enforce that judgment in the same manner as a judgment
 95 originating from the Superior Court.

1 2. This act shall take effect immediately but shall remain in-
 2 operative until the effective date of Senate Bill No. 1557 OCR of
 3 1986 (now pending before the Legislature).

STATEMENT

The purpose of this bill is to establish that a violation of R. S. 51:1-29 concerning slack filled containers requires a showing on a case-by-case basis of deception or fraud; that the State Superintendent of Weights and Measures is required to promulgate rules and regulations concerning nonfunctionally slack filled containers; and that the scope of the prohibition against slack filling is limited to immediate product containers only.

The slack fill prohibition contained in subsection c. of this bill is modeled after the federal Fair Packaging and Labeling Act's treatment of the concept, which is based on a deception standard. The term "slack fill" has been used consistently in federal statutes and regulations and those of other states to refer specifically to the level of fill of the immediate product container only and not to any external packaging in which the immediate product container is enclosed. This bill clarifies that this consistent usage should be applied in this State.

Other amendments made to R. S. 51:1-29 in this bill reflect amendments which have been made in Senate Bill No. 1557 OCR of 1986 (now pending before the Legislature). Senate Bill No. 1557 revises sections of Title 51 of the Revised Statutes in order to modernize the weights and measures statutes by recognizing modern packaging practices and marketing systems, as well as technological improvements in weighing and measuring systems.

LAW AND PUBLIC SAFETY—GENERAL

Amends weights and measures statute to define nonfunctionally slack filled containers.

SENATE LAW, PUBLIC SAFETY AND DEFENSE
COMMITTEE

STATEMENT TO

SENATE, No. 2854

with Senate committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 19, 1987

The Senate Law, Public Safety and Defense Committee favorably reports Senate Bill No. 2854 with amendments.

The purpose of Senate Bill No. 2854 is to establish that a violation of R. S. 51:1-29 concerning slack-filled containers requires a showing on a case-by-case basis of deception or fraud; that the State Superintendent for Weights and Measures in the Department of Law and Public Safety is required to promulgate rules and regulations concerning non-functionally slack-filled containers; and that the scope of the prohibition against slack filling is limited to immediate product containers only.

The slack fill prohibition contained in subsection c. of R. S. 51:1-29 is modeled after the federal Fair Packaging and Labeling Act's treatment of the concept, which is based on a deception standard. The term "slack fill" has been used consistently in federal statutes and regulations and those of other states to refer specifically to the level of fill of the immediate product container only and not to any external packaging in which the immediate product container is enclosed. This bill clarifies that this consistent usage should be applied in this State.

This bill amends R. S. 51:1-29 which was recently amended by P. L. 1986, c. 167. P. L. 1986, c. 167 revised the statutes dealing with weights and measures in order to modernize those statutes by recognizing modern packaging practices and marketing systems, as well as technological improvements in weighing and measuring systems.

In addition, the committee amended the bill in order to create a new section of law making it possible for weights and measures officials to use a volumetric method to test certain commodities which are required by federal regulations to be labeled by weight, but whose weight may vary. This new section applies only to hydrates of sodium tetraborate which are variants of the mineral borax. Borax is a naturally occurring substance used in certain commodities such as dry bleaches.