An Act

ENROLLED SENATE
BILL NO. 1857

By: Coates, Barrington and Burrage of the Senate

and

Sullivan, Jones and Harrison of the House

An Act relating to weights and measures; amending 2 O.S. 2001, Section 14-38, as last amended by Section 2, Chapter 8, O.S.L. 2009 (2 O.S. Supp. 2009, Section 14-38), which relates to unlawful acts; adding definitions; expanding unlawful acts; providing for disclosure of certain prices; providing for violations and penalties; setting parameters for certain inspections; revoking use of certain handbook; utilizing Handbook 130 issued by the National Institute of Standards and Technology for certain verification procedures; providing penalties for certain violations; making certain statutory provisions not applicable to certain circumstances; authorizing the State Board of Agriculture to promulgate rules; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 2 O.S. 2001, Section 14-38, as last amended by Section 2, Chapter 8, O.S.L. 2009 (2 O.S. Supp. 2009, Section 14-38), is amended to read as follows:

Section 14-38. A. For the purposes of this section:

1. "Advertised price" means the price of a consumer item which price a store has caused to be disseminated by means of promotional methods such as an in-store sign, newspaper, circular, television, radio advertising, or other means;

2. "Board" means the State Board of Agriculture;

3. "Computer-assisted checkout system" means any electronic device, computer system, or machine which determines the selling price of a consumer item by interpreting the UPC of the consumer item, or any other use of a similar price look-up function;

4. "Commissioner" means the Commissioner of the Department of Agriculture, Food, and Forestry;

5. "Consumer item" means each item being offered or exposed for sale;

6. "Department" means the Oklahoma Department of Agriculture, Food, and Forestry;

7. "Inspector" means an authorized representative of the Oklahoma Department of Agriculture, Food, and Forestry;

8. "Item price" means the tag, stamp, or mark affixed by an authorized person to a consumer item which sets forth, in Arabic numerals, the retail price thereof;

9. "Manually entered prices" means any method of determining the selling price of a consumer item by means other than a computer-assisted checkout system;

10. "Price look-up function" means the capacity of any checkout system to determine the retail price of a consumer item by way of the manual entry into the system of a code number assigned to that particular consumer item by an inspector or the store or the checkout operator's consultation of a file maintained at the point of sale or within the store;

11. "Sale price" means the price of consumer items offered for sale in good faith at a price below the price for which the consumer items are usually sold in the store;

12. "Shelf price" means the sign or tag placed by an authorized person at each point of display which clearly sets forth the retail price of the consumer item;

13. "Store" means any establishment which offers consumer items for sale at retail. Each separate building within which consumer items are offered for sale at retail shall constitute a separate store location for purposes of this section;

14. "Store-coded item" means the application of a UPC to any consumer item by that particular store; and

15. "Universal product code" (UPC) means the digital figure depicted through the use of bars and spaces, typically attached by the manufacturer or distributor, which may be scanned into the pricing system of a store.

B. 1. It shall be unlawful for any person to:

~~1. Sell~~

a. sell, offer, or expose for sale a quantity less than the quantity represented~~; or~~,

~~2. Take~~

b. take more than the represented quantity when, as a buyer, the person furnishes the weight or measure by means of which the quantity is determined~~; or~~,

~~3. Represent~~

c. represent the quantity in any manner calculated or tending to mislead or in any way deceive another person~~;~~, or

~~4. Misrepresent~~

d. misrepresent the price of any commodity or service sold, offered, exposed, or advertised for sale by weight, measure, or count or represent the price in

any manner calculated or tending to mislead or in any way deceive a person.

2. It shall be unlawful for a store to charge a retail price for any consumer item which exceeds the lowest then price in that store, whether a shelf, sale, advertised, or otherwise publicly communicated price, of the consumer item.

C. Every person, store, firm, partnership, corporation, or association which sells, offers for sale, or exposes consumer items for sale at retail within this state shall disclose to the consumer the item price of the consumer items by:

1. Causing to be conspicuously, clearly, and plainly marked, stamped, typed, or affixed to the items, the retail price in Arabic numerals; or

2. Disclosing to the consumer the item price of the consumer items by causing a shelf price to be posted at the point of display in Arabic numerals or maintaining a price look-up function for the consumer items, except for consumer items held in outside storage and warehouses.

D. 1. If the shelf labels do not conform with the provisions of this section, the store shall be subject to the following penalties:

a. for violations discovered upon the first inspection following any twelve-month period in which no violation of this section has been found, the store will receive a Letter of Warning and be placed on an increased inspection frequency. Stores will remain on an increased inspection frequency until they have achieved a twelve-month period in which no violation of this section has been found,

b. for violations identified in the second inspection following any twelve-month period within which no such violations have been found, a penalty in the amount of Ten Dollars ($10.00) per violation shall be imposed, but in no event shall the total penalty for all

violations identified at the second inspection exceed Five Hundred Dollars ($500.00), and

c. for violations identified in a third or subsequent inspection in a twelve-month period following a previous violation of this section, the penalties shall be doubled, up to a maximum of One Thousand Dollars ($1,000.00) per inspection.

2. Every day a violation is continued shall constitute a separate violation.

E. For the purpose of determining the compliance of a store with this section, an inspection shall be conducted of a sample of no fewer than fifty and no more than three hundred consumer items, with inspectors typically sampling fifty consumer items for each cash register that may be operational in a given store using a computer-assisted checkout system. Inspections for manually entered prices may consist of sample sizes of no fewer than ten and no more than fifty items. The sample shall be selected by the inspector from a cross section of all items offered for sale at the store inspected.

F. 1. For any price accuracy inspection under this section, the store representative shall afford the inspector access to the test mode of the computer-assisted checkout system in use at the store or to a comparable function of the system and to the retail price information contained in any price look-up system.

2. In a store with a laser scanning or other computer-assisted checkout system, the inspector shall be permitted, whether through an agency issued scanner or otherwise, to compare the item, shelf, sale, or advertised price of any consumer items offered in the store, not to exceed three hundred consumer items selected from a cross section of all items offered for sale at the location at any one inspection, with the programmed computer price. Inspectors should sample fifty consumer items for each cash register that may be operational in a given store not to exceed three hundred consumer items selected from a cross section of all items offered for sale at the location of that store at any one inspection. The store shall provide access to its computers as necessary for the inspector to make the inspection.

G. Undercharges shall not be considered an inaccurately priced item when calculating price accuracy under this section.

H. Stores on a routine inspection frequency may be inspected once per six (6) months, depending upon available resources of the Department. Stores on an increased inspection frequency may be inspected in sixty-day intervals.

I. Any prior adoption in statute or rule of the Examination Procedure for Price Verification Handbook 130 issued by the National Institute of Standards and Technology is revoked. However, the inspection and testing procedures used by inspectors shall generally conform to the standards of the then current Handbook 130 issued by the National Institute of Standards and Technology, specifically including verification procedures for manually entered prices.

J. Any store found in violation of this section shall be subject to the penalties specified in this subsection. Each day on which a violation is continued shall constitute a separate violation. The failure to accurately price ninety-five percent (95%) of all consumer items sampled as part of a given inspection shall be deemed a failed inspection. If the programmed computer price or manual checkout price, in cases where there is no programmed computer price, exceeds the shelf, sale, advertised, or otherwise publicly communicated price of any consumer item, the store shall be subject to the following penalties:

1. For violations discovered upon the first inspection following any twelve-month period in which no violation of this section has been found, the store will receive a Letter of Warning and be placed on an increased inspection frequency. Stores shall remain on an increased inspection frequency until they have achieved a twelve-month period in which no violation of this section has been found;

2. For violations discovered upon the second inspection following any twelve-month period in which no violation of this section has been found, the store shall pay a penalty of Seventy-five Dollars ($75.00) for each consumer item which results in an overcharge or potential overcharge;

3. Third violations discovered within any twelve-month period will be assessed a one-hundred-fifty-dollar penalty per consumer item which results in an overcharge or potential overcharge;

4. Fourth violations discovered within any twelve-month period will be assessed a two-hundred-fifty-dollar penalty per consumer item which results in an overcharge or potential overcharge;

5. Fifth violations discovered within any twelve-month period will be assessed a three-hundred-fifty-dollar penalty per consumer item which results in an overcharge or potential overcharge; and

6. Sixth or subsequent violations within any twelve-month period will be assessed a five-hundred-dollar penalty per consumer item which results in an overcharge or potential overcharge, with a maximum penalty per overcharge of Five Hundred Dollars ($500.00) per consumer item, regardless of additional violations per inspection per store location.

K. The provisions of the Oklahoma Small Business Regulatory Flexibility Act pertaining to waiver or reduction of any administrative penalty or administrative fine shall not be applicable to this section and may not be relied upon for a reduction or deferral or as imposing any procedural prerequisite or as a defense, respecting actions investigated and/or brought under this section.

L. The State Board of Agriculture shall have the authority to promulgate rules as necessary to carry out the purposes of this section.

SECTION 2. This act shall become effective July 1, 2010.

SECTION 3. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 25th day of May, 2010.

Presiding Officer of the Senate

Passed the House of Representatives the 27th day of May, 2010.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Governor this 28th
day of May, **20**10,
at 6:45 **o'clock** P **M.**

By:

Approved by the Governor of the State of Oklahoma the 9th **day of**
June, **20** 10, **at** 7:28 **o'clock** P **M.**

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this
10th **day of** June, **20**10,
at 3:08 **o'clock** P **M.**

By: