

FILED APR 12 2006

SENATE FILE 2403
BY COMMITTEE ON WAYS AND MEANS

(SUCCESSOR TO SF 2269)

(SUCCESSOR TO SSB 3075)

(COMPANION TO HF 2793)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to devices used for weighing and measuring, by
2 providing for the regulation of the devices, motor fuel, and
3 persons who service the devices, and providing for fees and
4 penalties.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SF 2403

1 Section 1. Section 214.1, Code 2005, is amended to read as
2 follows:

3 214.1 DEFINITIONS.

4 For the purpose of this chapter:

5 1. "Commercial scale" means the same as defined in section
6 215.26.

7 2. "Commercial weighing and measuring device" or "device"
8 means the same as defined in section 215.26.

9 ~~3. "Motor vehicle fuel" means a substance or~~
10 ~~combination of substances which is intended to be or is~~
11 ~~capable of being used for the purpose of propelling or running~~
12 ~~by combustion any internal combustion engine and is kept for~~
13 ~~sale or sold for that purpose~~ a substance or combination of
14 substances which is intended to be or is capable of being used
15 for the purpose of operating an internal combustion engine,
16 including but not limited to a motor vehicle, and is kept for
17 sale or sold for that purpose.

18 ~~2. 4. "Motor vehicle fuel pump" means a stationary pump,~~
19 ~~meter, or similar weighing and measuring device which is used~~
20 ~~for measuring retail to measure motor vehicle fuel.~~

21 ~~3. "Public scale" shall mean any scale or weighing device~~
22 ~~for the use of which a charge is made or compensation is~~
23 ~~derived.~~

24 5. "Retail dealer" means the same as defined in section
25 214A.1.

26 6. "Wholesale dealer" means the same as defined in section
27 214A.1.

28 Sec. 2. Section 214.2, Code 2005, is amended to read as
29 follows:

30 214.2 LICENSE.

31 A person who uses or displays for use any a commercial
32 weighing and measuring device, as defined in section 215.26,
33 shall secure obtain a license from the department.

34 Sec. 3. Section 214.3, subsection 1, Code 2005, is amended
35 to read as follows:

1 1. The A license for the inspection of a commercial
2 weighing and measuring device, other than for a motor fuel
3 pump, shall expire on December 31 of each year, ~~and.~~ A
4 license for the inspection of a motor vehicle fuel pump meter
5 shall expire on June 30 of each year. ~~The amount of the fee~~
6 ~~due for each license shall be as provided in subsection 3,~~
7 ~~except that the fee for a motor vehicle fuel pump shall be~~
8 ~~four dollars and fifty cents if paid within one month from the~~
9 ~~date the license is due.~~ A person shall apply to the
10 department to be issued a license or to renew a license as
11 provided by the department. The person shall pay the
12 department a license fee as provided in section 214.3A.

13 Sec. 4. Section 214.3, subsection 3, Code 2005, is amended
14 by striking the subsection.

15 Sec. 5. NEW SECTION. 214.3A LICENSE FEE SCHEDULE.

16 The department shall charge a fee for a license that it
17 issues or renews pursuant to section 214.3. The fee shall be
18 submitted with the license application. The amount of the fee
19 is as follows:

20 1. For commercial scales, the fee shall be based on its
21 capacity as follows:

22 a. Five hundred pounds or less, nine dollars.

23 b. More than five hundred pounds but not more than five
24 thousand pounds, sixteen dollars and fifty cents.

25 c. More than five thousand pounds but not more than fifty
26 thousand pounds, forty-six dollars and fifty cents.

27 d. More than fifty thousand pounds but not more than one
28 hundred twenty thousand pounds, eighty-four dollars.

29 e. More than one hundred twenty thousand pounds, one
30 hundred six dollars and fifty cents.

31 2. For meters, the fee shall be based on the type of meter
32 as follows:

33 a. A motor fuel pump which is used by a retail dealer,
34 four dollars and fifty cents if the fee is paid before August
35 1 after the date that license expires as provided in section

1 214.3. The fee shall be nine dollars if the fee is paid on or
2 after August 1.

3 b. A mass bulk meter, nine dollars.

4 c. A refined or bulk meter, nine dollars.

5 d. A stationary bulk fuel meter, nine dollars.

6 e. A stationary liquid petroleum gas meter, nine dollars.

7 f. A moisture meter, twenty-four dollars.

8 g. A liquid petroleum bulk truck meter, fifty-two dollars
9 and fifty cents.

10 Sec. 6. Section 214.4, subsection 1, unnumbered paragraph
11 1, Code 2005, is amended to read as follows:

12 If the department does not receive payment of the license
13 fee required pursuant to section ~~214-3~~ 214.3A within one month
14 from the due date, the department shall send a notice to the
15 owner or operator of the device. The notice shall be
16 delivered by certified mail. The notice shall state all of
17 the following:

18 Sec. 7. Section 214.4, subsection 1, paragraph b, Code
19 2005, is amended to read as follows:

20 b. The owner or operator has fifteen days after receipt of
21 the notice to pay the license fee ~~required-pursuant-to-section~~
22 ~~214-3~~.

23 Sec. 8. Section 214.5, Code 2005, is amended to read as
24 follows:

25 214.5 INSPECTION STICKERS.

26 1. For-each If the department licenses a commercial
27 weighing and measuring device licensed pursuant to section
28 214.2, the department shall also issue an inspection sticker,
29 which upon its inspection and approval of the device.

30 2. The inspection sticker shall not exceed two inches by
31 two inches in size. The inspection sticker shall be displayed
32 prominently on the front of the commercial weighing and
33 measuring device, and-the-defacing-or-wrongful-removal-of-the

34 3. A person shall not deface or wrongfully remove an
35 inspection sticker shall-be-punished-as-provided-in-chapter

1 189.

2 4. Absence The absence of an inspection sticker on a
3 commercial weighing and measuring device is prima facie
4 evidence that the ~~commercial-weighing-and-measuring~~ device is
5 being operated contrary to law.

6 Sec. 9. Section 214.6, Code 2005, is amended to read as
7 follows:

8 214.6 OATH OF WEIGHMASTERS.

9 ~~All-persons-keeping-public-scales~~ A person who keeps a
10 commercial scale, before ~~entering-upon-their~~ engaging in the
11 person's duties as ~~weighmasters~~ a weighmaster, shall be sworn
12 before ~~some~~ a person having authority to administer oaths~~-to~~.
13 The person who takes the oath shall swear to keep their the
14 person's scales correctly balanced, to make true weights, and
15 to render a correct account to the person having who requests
16 that a weighing done be performed.

17 Sec. 10. Section 214.8, Code 2005, is amended to read as
18 follows:

19 214.8 ~~PENALTY~~ PENALTIES -- LIABILITY FOR DAMAGES.

20 1. Any-weighmaster-violating-any-of-the-provisions-of
21 sections-214.6-and-214.7, shall-be Except as provided in
22 subsection 2, a person who violates a provision of this
23 chapter is guilty of a simple misdemeanor, and-be. Each day
24 that a continuing violation occurs shall be considered a
25 separate offense.

26 2. The state may proceed against a person who violates
27 this chapter by initiating an alternative civil enforcement
28 action in lieu of a prosecution. The alternative civil
29 enforcement action may be brought against the person as a
30 contested case proceeding by the department under chapter 17A
31 or as a civil judicial proceeding by the attorney general upon
32 referral by the department. The department may impose,
33 assess, and collect the civil penalty. The civil penalty
34 shall be for at least one hundred dollars but not more than
35 one thousand dollars for each violation. Each day that a

1 continuing violation occurs shall be considered a separate
2 offense.

3 a. Except as provided in paragraph "b", the state is
4 precluded from prosecuting a violation pursuant to subsection
5 1, if the state is a party in the alternative civil
6 enforcement action, the department has made a final decision
7 in the contested case proceeding, or a court has entered a
8 final judgment.

9 b. If a party to an alternative civil enforcement action
10 fails to pay the civil penalty to the department within thirty
11 days after the party has exhausted the party's administrative
12 remedies and the party has not sought judicial review in
13 accordance with section 17A.19, the department may order that
14 its final decision be vacated. When the department's final
15 decision is vacated, the state may initiate a criminal
16 prosecution, but shall be precluded from bringing an
17 alternative civil enforcement action. If a party to an
18 alternative civil enforcement action fails to pay the civil
19 penalty within thirty days after a court has entered a final
20 judgment, the department may request that the attorney general
21 petition the court to vacate its final judgment. When the
22 court's judgment has been vacated, the state may initiate a
23 criminal prosecution, but shall be precluded from bringing an
24 alternative civil enforcement action.

25 3. A person who violates a provision of this chapter is
26 liable to the a person who is injured as a result of the
27 violation for all damages sustained.

28 Sec. 11. Section 214.9, Code 2005, is amended to read as
29 follows:

30 214.9 SELF-SERVICE MOTOR VEHICLE FUEL PUMPS.

31 Self-service A self-service motor vehicle fuel pumps pump
32 located at a motor vehicle fuel stations station may be
33 equipped with an automatic latch-open devices device on the
34 fuel dispensing hose nozzle only if the nozzle valve is the
35 automatic closing type.

1 Sec. 12. Section 214.10, Code 2005, is amended to read as
2 follows:

3 214.10 RULES.

4 The department ~~of-agriculture-and-land-stewardship~~ may
5 ~~promulgate~~ adopt rules pursuant to chapter 17A as necessary to
6 promptly and effectively enforce the provisions of this
7 chapter.

8 Sec. 13. Section 214.11, Code 2005, is amended to read as
9 follows:

10 214.11 INSPECTIONS -- RECALIBRATIONS -- PENALTY.

11 The department ~~of-agriculture-and-land-stewardship~~ shall
12 provide for an annual inspections inspection of all each motor
13 ~~vehicle~~ fuel pumps pump which is licensed under this chapter.
14 ~~Inspections~~ The inspection shall ~~be-for-the-purpose-of~~
15 ~~determining~~ determine the accuracy of the pumps-measuring
16 ~~mechanisms,~~ ~~and-for-such-purpose-the-department's-inspectors~~
17 meter and the correctness of associated equipment. In order
18 to carry out an inspection, the department may enter upon the
19 premises of any a wholesale dealer or retail dealer, ~~as-they~~
20 ~~are-defined-in-section-214A-1,~~ of motor vehicle fuel or a
21 person selling or offering to sell fuel oil within this state.
22 Upon completion of an inspection, the inspector shall affix
23 the department's seal to the measuring mechanism of the motor
24 fuel pump. The seal shall be appropriately marked, dated, and
25 recorded by the inspector. If the owner of an inspected and
26 sealed motor fuel pump is registered with the department as a
27 servicer in accordance with section 215.23, or employs a
28 person so registered as a servicer, the owner or other
29 servicer may open the motor pump pump's dispenser, break the
30 department's seal, recalibrate the measuring mechanism if
31 necessary, and reseal the motor fuel pump ~~as-long-as,~~ if the
32 department is notified of the recalibration within forty-
33 eight hours, on a form provided by the department. ~~A-person~~
34 ~~violating-a-provision-of-this-section-is,~~ ~~upon-conviction,~~
35 ~~guilty-of-a-simple-misdemeanor.~~

1 Sec. 14. Section 215.1, Code 2005, is amended to read as
2 follows:

3 215.1 DUTY TO INSPECT.

4 The department shall regularly inspect all commercial
5 weighing and measuring devices, and when complaint is made to
6 the department that any false or incorrect weights weight or
7 measures-are measure is being made, the department shall
8 inspect the commercial weighing and measuring devices which
9 caused the complaint. The department may conduct a random
10 inspection of prepacked goods to determine whether the goods'
11 weight is recorded accurately.

12 Sec. 15. Section 215.2, Code 2005, is amended to read as
13 follows:

14 215.2 SPECIAL INSPECTION REQUEST -- FEES.

15 The fee for a special tests test, including but not limited
16 to, using state inspection equipment, for the calibration,
17 testing, certification, or repair of a commercial weighing and
18 measuring device shall be paid by the servicer or person
19 requesting the special test in-accordance-with-the-following
20 schedule. The amount of the inspection fee shall be as
21 follows:

22 1. Class-S7-scales For a commercial scale, seventy-five
23 dollars per hour.

24 2. Class-M7-meters For a meter, fifty-two dollars and
25 fifty cents per hour.

26 Sec. 16. Section 215.4, Code 2005, is amended to read as
27 follows:

28 215.4 TAG FOR INACCURATE DEVICE -- REINSPECTION -- FEE.

29 A commercial weighing and measuring device found to be
30 inaccurate upon inspection by the department shall be tagged
31 "condemned rejected until repaired" repaired and the "licensed
32 for commercial use" inspection sticker shall be removed. If
33 notice is received by the department that the device has been
34 repaired and upon reinspection the device is found to be
35 accurate, the license fee shall not be charged for the

1 reinspection. However, a second license fee shall be charged
2 if upon reinspection the device is found to be inaccurate. If
3 at a third reinspection the device is found to be inaccurate,
4 the license fee shall be charged and the device shall be
5 tagged "condemned" and removed from service.

6 Sec. 17. Section 215.9, Code 2005, is amended to read as
7 follows:

8 215.9 POWER OF CITIES LIMITED.

9 ~~Commodities~~ A city ordinance shall not require that a
10 commodity be weighed upon any scale bearing the inspection
11 card, issued by or measured if the commodity is weighed or
12 measured by a commercial weighing and measuring device
13 licensed by the department, shall not be required to be
14 reweighed by any ordinance of any city, nor shall their. A
15 city ordinance shall not restrict the sale of a commodity at
16 the weights so a weight or measure ascertained, and because
17 thereof, be by such ordinance, prohibited or restricted by a
18 commercial weighing and measuring device licensed by the
19 department.

20 Sec. 18. Section 215.10, Code 2005, is amended to read as
21 follows:

22 215.10 INSTALLATION OF NEW SCALES.

23 1. It shall be unlawful to A person shall not install a
24 commercial scale, used for commercial purposes in this state,
25 unless the commercial scale is so installed that it is easily
26 accessible for inspection and testing by equipment of the
27 department, and with due regard to the scale's size and
28 capacity. The installation shall be made consistent with the
29 requirements of section 215.18 and rules adopted by the
30 department.

31 2. Every A commercial scale manufacturer or dealer shall,
32 upon selling a commercial scale ~~of the above types in Iowa,~~
33 submit to the department upon forms provided by the
34 department, the make, capacity of the scale, the date of sale,
35 and the date and location of its installation.

1 Sec. 19. Section 215.15, Code 2005, is amended to read as
2 follows:

3 215.15 SCALE PIT.

4 ~~Scale~~ A scale pit shall ~~have be~~ installed to ensure that
5 there is proper room for an inspector or service person to
6 repair or inspect the scale. ~~Scale~~ The installation shall be
7 made consistent with the requirements of section 215.18 and
8 rules adopted by the department. The scale pit shall remain
9 dry at all times and ~~adequate~~ drainage shall be provided for
10 the purpose of inspecting and cleaning.

11 Sec. 20. Section 215.17, Code 2005, is amended to read as
12 follows:

13 215.17 TEST WEIGHTS TO BE USED.

14 1. A person engaged in scale repair work for hire shall
15 use only test weights sealed by the department in determining
16 the effectiveness of repair work and the test weights shall be
17 sealed as to their accuracy once each year. However, a person
18 shall not claim to be an official scale inspector and shall
19 not use the test weights except to determine the accuracy of
20 scale repair work done by the person and the person shall not
21 be entitled to a fee for their use.

22 ~~A fee shall be charged and collected~~ The department
23 shall impose and collect fees at the time of inspection for
24 the inspection of such weights as follows:

25 a. A laboratory fee of seventy-five dollars per hour.

26 b. A service fee which shall be as follows:

- 27 (1) All weights up to and including 25
- 28 pounds..... \$ 1.10 each
- 29 (2) Over twenty-five pounds capacity,
- 30 up to and including 50 pounds..... 2.25 each
- 31 (3) Over 50 pounds capacity, up to and
- 32 including 100 pounds..... 3.00 each
- 33 (4) Over 100 pounds capacity, up to
- 34 and including 500 pounds..... 4.50 each
- 35 (5) Over 500 pounds capacity, up to

1	and including 1,000 pounds.....	7.50 each
2	(6) The fee for all tank calibrations shall be as follows:	
3	(a) 100 gallons up to and including	
4	300 gallons	\$ 4.50
5	(b) 301 gallons up to and including	
6	500 gallons	7.50
7	(c) 501 gallons up to and including	
8	1,000 gallons	11.25
9	(d) 1,001 gallons up to and including	
10	2,000 gallons	15.00
11	(e) 2,001 gallons up to and including	
12	3,000 gallons	18.00
13	(f) 3,001 gallons up to and including	
14	4,000 gallons	21.00
15	(g) 4,001 gallons up to and including	
16	5,000 gallons	24.00
17	(h) 5,001 gallons up to and including	
18	6,000 gallons	27.00
19	(i) 6,001 gallons up to and including	
20	7,000 gallons	30.00
21	(j) 7,001 gallons and up	37.50

22 3. Calibration shall not be required ~~of~~ for a tank which
23 is not used for the purpose of measuring, or which is equipped
24 with a meter, and vehicle tanks loaded from meters and
25 carrying a printed ticket showing gallonage shall not be
26 required to be calibrated.

27 4. The department shall deposit moneys collected in fees
28 which are imposed under this section into the metrology fund
29 created in section 215.17A.

30 Sec. 21. NEW SECTION. 215.17A METROLOGY FUND.

31 1. A metrology fund is created in the state treasury under
32 the control of the department. The fund is composed of moneys
33 collected in fees required to be paid to the department
34 pursuant to section 215.17. The fund may also include moneys
35 appropriated by the general assembly and moneys available to

1 and obtained or accepted by the department from the United
2 States or private sources for placement in the fund.

3 2. Moneys in the fund are subject to an annual audit by
4 the auditor of state. The metrology fund is subject to
5 warrants written by the director of the department of
6 administrative services, drawn upon the written requisition of
7 the department.

8 3. Moneys in the fund are appropriated exclusively to the
9 department for the exclusive purpose of maintaining,
10 replacing, and upgrading equipment used in the department's
11 metrology laboratory.

12 4. The department may adopt rules pursuant to chapter 17A
13 which are necessary to administer this section.

14 5. Section 8.33 shall not apply to moneys in the fund.
15 Notwithstanding section 12C.7, moneys earned as income or
16 interest from the fund shall remain in the fund until expended
17 as provided in this section.

18 Sec. 22. Section 215.26, Code 2005, is amended by adding
19 the following new subsection:

20 NEW SUBSECTION. 0A. "Commercial scale" means a weighing
21 and measuring device which is used to determine the mass of a
22 body by using the effect of gravity on that body, if the
23 device is in the possession of a person who uses the device as
24 part of a business.

25 Sec. 23. Section 215.26, subsection 1, Code 2005, is
26 amended to read as follows:

27 1. "Commercial weighing and measuring device" or "device"
28 means a weight or measure or weighing or measuring device used
29 to establish size, quantity, area or other quantitative
30 measurement of a commodity sold by weight or measurement, or
31 where the price to be paid for producing the commodity is
32 based upon the weight or measurement of the commodity. The
33 term includes an accessory attached to or used in connection
34 with a commercial weighing or measuring device when the
35 accessory is so designed or installed that its operation may

1 affect the accuracy of the device. Commercial weighing and
2 measuring device includes a public commercial scale as-defined
3 under-section-214-1.

4 Sec. 24. NEW SECTION. 215.27 PENALTIES.

5 1. Except as provided in subsection 2, a person who
6 violates a provision of this chapter commits a simple
7 misdemeanor. Each day that a continuing violation occurs
8 shall be considered a separate offense.

9 2. The state may proceed against a person who violates
10 this chapter by initiating an alternative civil enforcement
11 action in lieu of a prosecution. The alternative civil
12 enforcement action may be brought against the person as a
13 contested case proceeding by the department under chapter 17A
14 or as a civil judicial proceeding by the attorney general upon
15 referral by the department. The department may impose,
16 assess, and collect the civil penalty. The civil penalty
17 shall be for at least one hundred dollars but not more than
18 one thousand dollars for each violation. Each day that a
19 continuing violation occurs shall be considered a separate
20 offense.

21 a. Except as provided in paragraph "b", the state is
22 precluded from prosecuting a violation pursuant to subsection
23 1, if the state is a party in the alternative civil
24 enforcement action, the department has made a final decision
25 in the contested case proceeding, or a court has entered a
26 final judgment.

27 b. If a party to an alternative civil enforcement action
28 fails to pay the civil penalty to the department within thirty
29 days after the party has exhausted the party's administrative
30 remedies and the party has not sought judicial review in
31 accordance with section 17A.19, the department may order that
32 its final decision be vacated. When the department's final
33 decision is vacated, the state may initiate a criminal
34 prosecution, but shall be precluded from bringing an
35 alternative civil enforcement action. If a party to an

1 alternative civil enforcement action fails to pay the civil
2 penalty within thirty days after a court has entered a final
3 judgment, the department may request that the attorney general
4 petition the court to vacate its final judgment. When the
5 court's judgment has been vacated, the state may initiate a
6 criminal prosecution, but shall be precluded from bringing an
7 alternative civil enforcement action.

8 Sec. 25. Section 215A.10, Code 2005, is amended to read as
9 follows:

10 215A.10 PENALTY.

11 1. Every Except as provided in subsection 2, a person who
12 uses or causes to be used a moisture-measuring device in
13 commerce with knowledge that ~~such the~~ moisture-measuring
14 device has not been inspected and approved by the department
15 ~~in-accordance-with-the-provisions-of~~ as provided in this
16 chapter ~~shall-be~~ is guilty of a simple misdemeanor.

17 2. The state may proceed against a person who violates
18 this chapter by initiating an alternative civil enforcement
19 action in lieu of a prosecution. The alternative civil
20 enforcement action may be brought against the person as a
21 contested case proceeding by the department under chapter 17A
22 or as a civil judicial proceeding by the attorney general upon
23 referral by the department. The department may impose,
24 assess, and collect the civil penalty. The civil penalty
25 shall be for at least one hundred dollars but not more than
26 one thousand dollars for each violation. Each day that a
27 continuing violation occurs shall be considered a separate
28 offense.

29 a. Except as provided in paragraph "b", the state is
30 precluded from prosecuting a violation pursuant to subsection
31 1, if the state is a party in the alternative civil
32 enforcement action, the department has made a final decision
33 in the contested case proceeding, or a court has entered a
34 final judgment.

35 b. If a party to an alternative civil enforcement action

1 fails to pay the civil penalty to the department within thirty
2 days after the party has exhausted the party's administrative
3 remedies and the party has not sought judicial review in
4 accordance with section 17A.19, the department may order that
5 its final decision be vacated. When the department's final
6 decision is vacated, the state may initiate a criminal
7 prosecution, but shall be precluded from bringing an
8 alternative civil enforcement action. If a party to an
9 alternative civil enforcement action fails to pay the civil
10 penalty within thirty days after a court has entered a final
11 judgment, the department may request that the attorney general
12 petition the court to vacate its final judgment. When the
13 court's judgment has been vacated, the state may initiate a
14 criminal prosecution, but shall be precluded from bringing an
15 alternative civil enforcement action.

16 Sec. 26. NAME CHANGE. Sections 214A.16 and 422.11C, Code
17 2005, are amended by striking the words "motor vehicle fuel
18 pump" or "motor vehicle fuel pumps" and inserting the
19 following: "motor fuel pump" or "motor fuel pumps".

20 Sec. 27. CODE EDITOR DIRECTIVE. The Code editor shall
21 transfer section 215.26 to the beginning of chapter 215.

22 Sec. 28. Section 214A.12, Code 2005, is repealed.

23 EXPLANATION

24 This bill amends Code chapters 214, 215, and 215A, which
25 regulate commercial weighing and measuring devices such as
26 scales and meters, and also provide for the inspection of
27 weights and measures, by the department of agriculture and
28 land stewardship. In general, Code chapters 214 and 215A
29 regulate devices and Code chapter 215 regulates service
30 agencies engaged in the business of installing, servicing, or
31 repairing these devices. There are references to Code chapter
32 214A, which regulates motor vehicle fuel. The Code chapters
33 contain some overlapping provisions.

34 The bill changes the names of terms used in the Code
35 chapters. It changes the term "motor vehicle fuel pump" to

1 "motor fuel pump" and "public scale" to "commercial scale".
2 The bill defines these terms and makes the use of terms
3 consistent throughout all three Code chapters. It also
4 rewrites language in the chapters for consistency and
5 readability.

6 Many of the provisions in Code chapters 214, 215, and 215A
7 relate to licensure and inspection requirements. The bill
8 rewrites a provision in Code chapter 214 which provides for
9 fees charged for both issuing and renewing a license. Under
10 Code section 214.3, the license fee is generally based on the
11 capacity of the device or the type of device in service. The
12 bill eliminates a number of names for specific scales (counter
13 scales, portable platform scales, livestock monorail scales,
14 single animal scales, grain test scales, and precious metal
15 and gems scales). It amends provisions in Code section 215.17
16 to establish an hourly laboratory fee. It also provides that
17 all inspection fees enumerated in that section must be
18 deposited into a trust fund under the control of the
19 department for its use in maintaining, replacing, and
20 upgrading equipment used in the metrology laboratory.

21 The bill includes special penalty provisions in each of the
22 Code chapters. These chapters are codified in Title V,
23 subtitle 4, of the Code. Code section 189.21 provides a
24 general penalty for a violation of a provision in the
25 subtitle. The penalty is a simple misdemeanor. Code sections
26 214.8 and 214A.11 have duplicative penalty provisions. A
27 simple misdemeanor is punishable by confinement for no more
28 than 30 days or a fine of at least \$50 but not more than \$500
29 or by both. The bill provides that the state may proceed
30 against a person who violates a provision in one of these
31 chapters by initiating an alternative civil enforcement action
32 in lieu of a criminal prosecution. The amount of the civil
33 penalty ranges from \$100 to \$1,000. An alternative civil
34 enforcement action may be brought as a contested case
35 proceeding within the department under the Iowa administrative

1 procedure Act (Code chapter 17A) or as a court case by the
2 attorney general. If the state brings an alternative civil
3 enforcement action, it is precluded from bringing a criminal
4 prosecution. There is one exception. If the party found in
5 violation of the law fails to pay the civil penalty to the
6 department within a 30-day period, the department may take
7 steps to vacate the administrative order or court judgment
8 which imposed the civil penalty and the state may initiate the
9 criminal prosecution, but is precluded from bringing a new
10 alternative civil enforcement action.

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S-5217

1 Amend Senate File 2403 as follows:

2 1. Page 4, by striking lines 23 through 25 and
3 inserting the following: "chapter is guilty of a
4 simple misdemeanor, and be."

5 2. By striking page 4, line 32, through page 5,
6 line 3, and inserting the following: "referral by the
7 department."

8 a. The department shall not impose a civil penalty
9 for the first alleged violation of a provision of this
10 chapter, including a rule adopted pursuant to this
11 chapter. In that case, the department shall issue a
12 letter of warning which includes all of the following:

13 (1) The alleged violator's name, trade name, and
14 address.

15 (2) A description of the alleged violation with
16 specific citation to the statute or administrative
17 rule alleged to have been violated.

18 (3) The location, date, and time of the alleged
19 violation.

20 b. For a violation of the same provision of this
21 chapter, including a rule adopted pursuant to this
22 chapter, arising subsequent to the issuance of a
23 letter of warning, the department may impose, assess,
24 and collect a civil penalty as follows:

25 (1) For the first violation after the letter of
26 warning, the amount of the civil penalty shall not
27 exceed one hundred dollars.

28 (2) For the second violation after the letter of
29 warning, the amount of the civil penalty shall not
30 exceed five hundred dollars.

31 (3) For each subsequent violation after the letter
32 of warning, the amount of the civil penalty shall not
33 exceed one thousand dollars.

34 When imposing a civil penalty, the department shall
35 consider the degree and extent of potential harm
36 caused by the violation, the amount of money which the
37 violator obtained as a result of the noncompliance,
38 whether the violation was committed willfully, and the
39 compliance record of the violator.

40 2A. a. Except as provided in paragraph "b", the
41 state is".

42 3. Page 6, by inserting after line 35 the
43 following:

44 "Sec. ____ . NEW SECTION. 214.12 SUSPENSION OF
45 REQUIREMENTS.

46 The department may suspend in whole or in part any
47 requirement of this chapter, including a rule adopted
48 pursuant to this chapter, as applied to an identified
49 person on the basis of the particular circumstances of
50 that person, when the department determines that the

S-5217

1 suspension promotes the maintenance of good commercial
2 practices within the state."

3 4. Page 12, by striking lines 7 and 8 and
4 inserting the following: "misdemeanor."

5 5. Page 12, by striking lines 15 through 21 and
6 inserting the following: "referral by the department."

7 a. The department shall not impose a civil penalty
8 for the first alleged violation of a provision of this
9 chapter, including a rule adopted pursuant to this
10 chapter. In that case, the department shall issue a
11 letter of warning which includes all of the following:
12 (1) The alleged violator's name, trade name, and
13 address.

14 (2) A description of the alleged violation with
15 specific citation to the statute or administrative
16 rule alleged to have been violated.

17 (3) The location, date, and time of the alleged
18 violation.

19 b. For a violation of the same provision of this
20 chapter, including a rule adopted pursuant to this
21 chapter, arising subsequent to the issuance of a
22 letter of warning, the department may impose, assess,
23 and collect a civil penalty as follows:

24 (1) For the first violation after the letter of
25 warning, the amount of the civil penalty shall not
26 exceed one hundred dollars.

27 (2) For the second violation after the letter of
28 warning, the amount of the civil penalty shall not
29 exceed five hundred dollars.

30 (3) For each subsequent violation after the letter
31 of warning, the amount of the civil penalty shall not
32 exceed one thousand dollars.

33 c. When imposing a civil penalty, the department
34 shall consider the degree and extent of potential harm
35 caused by the violation, the amount of money which the
36 violator obtained as a result of the noncompliance,
37 whether the violation was committed willfully, and the
38 compliance record of the violator.

39 3. a. Except as provided in paragraph "b", the
40 state is".

41 6. Page 13, by inserting after line 7 the
42 following:

43 "Sec. ____ . NEW SECTION. 215.28 SUSPENSION OF
44 REQUIREMENTS.

45 The department may suspend in whole or in part any
46 requirement of this chapter, including a rule adopted
47 pursuant to this chapter, as applied to an identified
48 person on the basis of the particular circumstances of
49 that person, when the department determines that the
50 suspension promotes the maintenance of good commercial

1 practices within the state."

2 7. Page 13, by striking lines 23 through 29 and
3 inserting the following: "referral by the department.

4 a. The department shall not impose a civil penalty
5 for the first alleged violation of a provision of this
6 chapter, including a rule adopted pursuant to this
7 chapter. In that case, the department shall issue a
8 letter of warning which includes all of the following:

9 (1) The alleged violator's name, trade name, and
10 address.

11 (2) A description of the alleged violation with
12 specific citation to the statute or administrative
13 rule alleged to have been violated.

14 (3) The location, date, and time of the alleged
15 violation.

16 b. For a violation of the same provision of this
17 chapter, including a rule adopted pursuant to this
18 chapter, arising subsequent to the issuance of a
19 letter of warning, the department may impose, assess,
20 and collect a civil penalty as follows:

21 (1) For the first violation after the letter of
22 warning, the amount of the civil penalty shall not
23 exceed one hundred dollars.

24 (2) For the second violation after the letter of
25 warning, the amount of the civil penalty shall not
26 exceed five hundred dollars.

27 (3) For each subsequent violation after the letter
28 of warning, the amount of the civil penalty shall not
29 exceed one thousand dollars.

30 When imposing a civil penalty, the department shall
31 consider the degree and extent of potential harm
32 caused by the violation, the amount of money which the
33 violator obtained as a result of the noncompliance,
34 whether the violation was committed willfully, and the
35 compliance record of the violator.

36 3. a. Except as provided in paragraph "b", the
37 state is".

38 8. Page 14, by inserting after line 15 the
39 following:

40 "Sec. ____ . NEW SECTION. 215A.11 SUSPENSION OF
41 REQUIREMENTS.

42 The department may suspend in whole or in part any
43 requirement of this chapter, including a rule adopted
44 pursuant to this chapter, as applied to an identified
45 person on the basis of the particular circumstances of
46 that person, when the department determines that the
47 suspension promotes the maintenance of good commercial
48 practices within the state."

49 9. By renumbering as necessary.

By BRAD ZAUN

SENATE FILE 2403
BY COMMITTEE ON WAYS AND MEANS

(SUCCESSOR TO SF 2269)
(SUCCESSOR TO SSB 3075)

(COMPANION TO HF 2793)

(AS AMENDED AND PASSED BY THE SENATE APRIL 24, 2006)

~~_____~~ - New Language by the Senate

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to devices used for weighing and measuring, by
2 providing for the regulation of the devices, motor fuel, and
3 persons who service the devices, and providing for fees and
4 penalties.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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17

SF.2403

SF 2403
da/cc/26

1 Section 1. Section 214.1, Code 2005, is amended to read as
2 follows:

3 214.1 DEFINITIONS.

4 For the purpose of this chapter:

5 1. "Commercial scale" means the same as defined in section
6 215.26.

7 2. "Commercial weighing and measuring device" or "device"
8 means the same as defined in section 215.26.

9 ~~3. "Motor vehicle fuel" means a substance or~~
10 ~~combination of substances which is intended to be or is~~
11 ~~capable of being used for the purpose of propelling or running~~
12 ~~by combustion any internal combustion engine and is kept for~~
13 ~~sale or sold for that purpose~~ a substance or combination of
14 substances which is intended to be or is capable of being used
15 for the purpose of operating an internal combustion engine,
16 including but not limited to a motor vehicle, and is kept for
17 sale or sold for that purpose.

18 ~~4. "Motor vehicle fuel pump" means a stationary pump,~~
19 ~~meter, or similar weighing and measuring device which is used~~
20 ~~for measuring retail to measure motor vehicle fuel.~~

21 ~~3. "Public scale" shall mean any scale or weighing device~~
22 ~~for the use of which a charge is made or compensation is~~
23 ~~derived.~~

24 5. "Retail dealer" means the same as defined in section
25 214A.1.

26 6. "Wholesale dealer" means the same as defined in section
27 214A.1.

28 Sec. 2. Section 214.2, Code 2005, is amended to read as
29 follows:

30 214.2 LICENSE.

31 A person who uses or displays for use any a commercial
32 weighing and measuring device, as defined in section 215.26,
33 shall secure obtain a license from the department.

34 Sec. 3. Section 214.3, subsection 1, Code 2005, is amended
35 to read as follows:

1 1. ~~The A license for the inspection of a commercial~~
2 ~~weighing and measuring device, other than for a motor fuel~~
3 ~~pump, shall expire on December 31 of each year, and. A~~
4 ~~license for the inspection of a motor vehicle fuel pump meter~~
5 ~~shall expire on June 30 of each year. The amount of the fee~~
6 ~~due for each license shall be as provided in subsection 3,~~
7 ~~except that the fee for a motor vehicle fuel pump shall be~~
8 ~~four dollars and fifty cents if paid within one month from the~~
9 ~~date the license is due. A person shall apply to the~~
10 ~~department to be issued a license or to renew a license as~~
11 ~~provided by the department. The person shall pay the~~
12 ~~department a license fee as provided in section 214.3A.~~

13 Sec. 4. Section 214.3, subsection 3, Code 2005, is amended
14 by striking the subsection.

15 Sec. 5. NEW SECTION. 214.3A LICENSE FEE SCHEDULE.

16 The department shall charge a fee for a license that it
17 issues or renews pursuant to section 214.3. The fee shall be
18 submitted with the license application. The amount of the fee
19 is as follows:

20 1. For commercial scales, the fee shall be based on its
21 capacity as follows:

22 a. Five hundred pounds or less, nine dollars.

23 b. More than five hundred pounds but not more than five
24 thousand pounds, sixteen dollars and fifty cents.

25 c. More than five thousand pounds but not more than fifty
26 thousand pounds, forty-six dollars and fifty cents.

27 d. More than fifty thousand pounds but not more than one
28 hundred twenty thousand pounds, eighty-four dollars.

29 e. More than one hundred twenty thousand pounds, one
30 hundred six dollars and fifty cents.

31 2. For meters, the fee shall be based on the type of meter
32 as follows:

33 a. A motor fuel pump which is used by a retail dealer,
34 four dollars and fifty cents if the fee is paid before August
35 1 after the date that license expires as provided in section

1 214.3. The fee shall be nine dollars if the fee is paid on or
2 after August 1.

3 b. A mass bulk meter, nine dollars.

4 c. A refined or bulk meter, nine dollars.

5 d. A stationary bulk fuel meter, nine dollars.

6 e. A stationary liquid petroleum gas meter, nine dollars.

7 f. A moisture meter, twenty-four dollars.

8 g. A liquid petroleum bulk truck meter, fifty-two dollars
9 and fifty cents.

10 Sec. 6. Section 214.4, subsection 1, unnumbered paragraph
11 1, Code 2005, is amended to read as follows:

12 If the department does not receive payment of the license
13 fee required pursuant to section ~~214.3~~ 214.3A within one month
14 from the due date, the department shall send a notice to the
15 owner or operator of the device. The notice shall be
16 delivered by certified mail. The notice shall state all of
17 the following:

18 Sec. 7. Section 214.4, subsection 1, paragraph b, Code
19 2005, is amended to read as follows:

20 b. The owner or operator has fifteen days after receipt of
21 the notice to pay the license fee ~~required-pursuant-to-section~~
22 ~~214.3~~.

23 Sec. 8. Section 214.5, Code 2005, is amended to read as
24 follows:

25 214.5 INSPECTION STICKERS.

26 1. For each If the department licenses a commercial
27 weighing and measuring device licensed pursuant to section
28 214.2, the department shall also issue an inspection sticker,
29 which upon its inspection and approval of the device.

30 2. The inspection sticker shall not exceed two inches by
31 two inches in size. The inspection sticker shall be displayed
32 prominently on the front of the commercial weighing and
33 measuring device, and-the-defacing-or-wrongful-removal-of-the

34 3. A person shall not deface or wrongfully remove an
35 inspection sticker shall-be-punished-as-provided-in-chapter

1 189.

2 4. Absence The absence of an inspection sticker on a
3 commercial weighing and measuring device is prima facie
4 evidence that the ~~commercial-weighing-and-measuring~~ device is
5 being operated contrary to law.

6 Sec. 9. Section 214.6, Code 2005, is amended to read as
7 follows:

8 214.6 OATH OF WEIGHMASTERS.

9 ~~All-persons-keeping-public-scales~~ A person who keeps a
10 commercial scale, before entering-upon-their engaging in the
11 person's duties as weighmasters a weighmaster, shall be sworn
12 before ~~some~~ a person having authority to administer oaths, ~~to.~~
13 The person who takes the oath shall swear to keep their the
14 person's scales correctly balanced, to make true weights, and
15 to render a correct account to the person ~~having~~ who requests
16 that a weighing done be performed.

17 Sec. 10. Section 214.8, Code 2005, is amended to read as
18 follows:

19 214.8 ~~PENALTY~~ PENALTIES -- LIABILITY FOR DAMAGES.

20 1. Any-weighmaster-violating-any-of-the-provisions-of
21 sections-214.6-and-214.7, shall-be Except as provided in
22 subsection 2, a person who violates a provision of this
23 chapter is guilty of a simple misdemeanor, and-be.

24 2. The state may proceed against a person who violates
25 this chapter by initiating an alternative civil enforcement
26 action in lieu of a prosecution. The alternative civil
27 enforcement action may be brought against the person as a
28 contested case proceeding by the department under chapter 17A
29 or as a civil judicial proceeding by the attorney general upon
30 referral by the department.

31 a. The department shall not impose a civil penalty for the
32 first alleged violation of a provision of this chapter,
33 including a rule adopted pursuant to this chapter. In that
34 case, the department shall issue a letter of warning which
35 includes all of the following:

1 (1) The alleged violator's name, trade name, and address.

2 (2) A description of the alleged violation with specific
3 citation to the statute or administrative rule alleged to have
4 been violated.

5 (3) The location, date, and time of the alleged violation.

6 b. For a violation of the same provision of this chapter,
7 including a rule adopted pursuant to this chapter, arising
8 subsequent to the issuance of a letter of warning, the
9 department may impose, assess, and collect a civil penalty as
10 follows:

11 (1) For the first violation after the letter of warning,
12 the amount of the civil penalty shall not exceed one hundred
13 dollars.

14 (2) For the second violation after the letter of warning,
15 the amount of the civil penalty shall not exceed five hundred
16 dollars.

17 (3) For each subsequent violation after the letter of
18 warning, the amount of the civil penalty shall not exceed one
19 thousand dollars.

20 When imposing a civil penalty, the department shall
21 consider the degree and extent of potential harm caused by the
22 violation, the amount of money which the violator obtained as
23 a result of the noncompliance, whether the violation was
24 committed willfully, and the compliance record of the
25 violator.

26 2A. a. Except as provided in paragraph "b", the state is
27 precluded from prosecuting a violation pursuant to subsection
28 1, if the state is a party in the alternative civil
29 enforcement action, the department has made a final decision
30 in the contested case proceeding, or a court has entered a
31 final judgment.

32 b. If a party to an alternative civil enforcement action
33 fails to pay the civil penalty to the department within thirty
34 days after the party has exhausted the party's administrative
35 remedies and the party has not sought judicial review in

1 accordance with section 17A.19, the department may order that
 2 its final decision be vacated. When the department's final
 3 decision is vacated, the state may initiate a criminal
 4 prosecution, but shall be precluded from bringing an
 5 alternative civil enforcement action. If a party to an
 6 alternative civil enforcement action fails to pay the civil
 7 penalty within thirty days after a court has entered a final
 8 judgment, the department may request that the attorney general
 9 petition the court to vacate its final judgment. When the
 10 court's judgment has been vacated, the state may initiate a
 11 criminal prosecution, but shall be precluded from bringing an
 12 alternative civil enforcement action.

13 3. A person who violates a provision of this chapter is
 14 liable to the a person who is injured as a result of the
 15 violation for all damages sustained.

16 Sec. 11. Section 214.9, Code 2005, is amended to read as
 17 follows:

18 214.9 SELF-SERVICE MOTOR VEHICLE FUEL PUMPS.

19 ~~Self-service~~ A self-service motor vehicle fuel pumps pump
 20 located at a motor vehicle fuel stations station may be
 21 equipped with an automatic latch-open devices device on the
 22 fuel dispensing hose nozzle only if the nozzle valve is the
 23 automatic closing type.

24 Sec. 12. Section 214.10, Code 2005, is amended to read as
 25 follows:

26 214.10 RULES.

27 ~~The department of-agriculture-and-land-stewardship~~ may
 28 ~~promulgate~~ adopt rules pursuant to chapter 17A as necessary to
 29 promptly and effectively enforce the provisions of this
 30 chapter.

31 Sec. 13. Section 214.11, Code 2005, is amended to read as
 32 follows:

33 214.11 INSPECTIONS -- RECALIBRATIONS -- PENALTY.

34 ~~The department of-agriculture-and-land-stewardship~~ shall
 35 provide for an annual inspections inspection of ~~all~~ each motor

1 vehicle fuel pumps pump which is licensed under this chapter.
2 ~~Inspections~~ The inspection shall be-for-the-purpose-of
3 ~~determining~~ determine the accuracy of the pumps¹-measuring
4 mechanisms,~~and-for-such-purpose-the-department's-inspectors~~
5 meter and the correctness of associated equipment. In order
6 to carry out an inspection, the department may enter upon the
7 premises of any a wholesale dealer or retail dealer,~~as-they~~
8 ~~are-defined-in-section-214A-1,~~ of motor vehicle fuel or a
9 person selling or offering to sell fuel oil within this state.
10 Upon completion of an inspection, the inspector shall affix
11 the department's seal to the measuring mechanism of the motor
12 fuel pump. The seal shall be appropriately marked, dated, and
13 recorded by the inspector. If the owner of an inspected and
14 sealed motor fuel pump is registered with the department as a
15 servicer in accordance with section 215.23, or employs a
16 person so registered as a servicer, the owner or other
17 servicer may open the motor pump pump's dispenser, break the
18 department's seal, recalibrate the measuring mechanism if
19 necessary, and reseal the motor fuel pump ~~as-long-as,~~ if the
20 department is notified of the recalibration within forty-
21 eight hours, on a form provided by the department. ~~A-person~~
22 ~~violating-a-provision-of-this-section-is,~~ upon-conviction,
23 guilty-of-a-simple-misdemeanor.

24 Sec. 14. NEW SECTION. 214.12 SUSPENSION OF REQUIREMENTS.

25 The department may suspend in whole or in part any
26 requirement of this chapter, including a rule adopted pursuant
27 to this chapter, as applied to an identified person on the
28 basis of the particular circumstances of that person, when the
29 department determines that the suspension promotes the
30 maintenance of good commercial practices within the state.

31 Sec. 15. Section 215.1, Code 2005, is amended to read as
32 follows:

33 215.1 DUTY TO INSPECT.

34 The department shall regularly inspect all commercial
35 weighing and measuring devices, and when complaint is made to

1 the department that any false or incorrect weights weight or
2 measures-are measure is being made, the department shall
3 inspect the commercial weighing and measuring devices which
4 caused the complaint. The department may conduct a random
5 inspection of prepacked goods to determine whether the goods'
6 weight is recorded accurately.

7 Sec. 16. Section 215.2, Code 2005, is amended to read as
8 follows:

9 215.2 SPECIAL INSPECTION REQUEST -- FEES.

10 The fee for a special tests test, including but not limited
11 to, using state inspection equipment, for the calibration,
12 testing, certification, or repair of a commercial weighing and
13 measuring device shall be paid by the servicer or person
14 requesting the special test in-accordance-with-the-following
15 schedule. The amount of the inspection fee shall be as
16 follows:

17 1. Class-S,--scales For a commercial scale, seventy-five
18 dollars per hour.

19 2. Class-M,--meters For a meter, fifty-two dollars and
20 fifty cents per hour.

21 Sec. 17. Section 215.4, Code 2005, is amended to read as
22 follows:

23 215.4 TAG FOR INACCURATE DEVICE -- REINSPECTION -- FEE.

24 A commercial weighing and measuring device found to be
25 inaccurate upon inspection by the department shall be tagged
26 "condemned rejected until repaired" repaired and the "licensed
27 for commercial use" inspection sticker shall be removed. If
28 notice is received by the department that the device has been
29 repaired and upon reinspection the device is found to be
30 accurate, the license fee shall not be charged for the
31 reinspection. However, a second license fee shall be charged
32 if upon reinspection the device is found to be inaccurate. If
33 at a third reinspection the device is found to be inaccurate,
34 the license fee shall be charged and the device shall be
35 tagged "condemned" and removed from service.

1 Sec. 18. Section 215.9, Code 2005, is amended to read as
2 follows:

3 215.9 POWER OF CITIES LIMITED.

4 ~~Commodities~~ A city ordinance shall not require that a
5 commodity be weighed upon-any-scale-bearing-the-inspection
6 card-issued-by or measured if the commodity is weighed or
7 measured by a commercial weighing and measuring device
8 licensed by the department-shall-not-be-required-to-be
9 reweighed-by-any-ordinance-of-any-city-nor-shall-their. A
10 city ordinance shall not restrict the sale of a commodity at
11 the-weights-so a weight or measure ascertained-and-because
12 thereof-be-by-such-ordinance-prohibited-or-restricted by a
13 commercial weighing and measuring device licensed by the
14 department.

15 Sec. 19. Section 215.10, Code 2005, is amended to read as
16 follows:

17 215.10 INSTALLATION OF NEW SCALES.

18 ~~1. It shall be unlawful to~~ A person shall not install a
19 commercial scale-used-for-commercial-purposes-in-this-state,
20 unless the commercial scale is so installed that it is easily
21 accessible for inspection and testing by equipment of the
22 department, and with due regard to the scale's size and
23 capacity. The installation shall be made consistent with the
24 requirements of section 215.18 and rules adopted by the
25 department.

26 ~~2. Every~~ A commercial scale manufacturer or dealer shall,
27 upon selling a commercial scale ~~of-the-above-types-in-Iowa,~~
28 submit to the department upon forms provided by the
29 department, the make, capacity of the scale, the date of sale,
30 and the date and location of its installation.

31 Sec. 20. Section 215.15, Code 2005, is amended to read as
32 follows:

33 215.15 SCALE PIT.

34 ~~Scale~~ A scale pit shall ~~have~~ be installed to ensure that
35 there is proper room for an inspector or service person to

1 repair or inspect the scale. ~~Scale~~ The installation shall be
2 made consistent with the requirements of section 215.18 and
3 rules adopted by the department. The scale pit shall remain
4 dry at all times and adequate drainage shall be provided for
5 the purpose of inspecting and cleaning.

6 Sec. 21. Section 215.17, Code 2005, is amended to read as
7 follows:

8 215.17 TEST WEIGHTS TO BE USED.

9 1. A person engaged in scale repair work for hire shall
10 use only test weights sealed by the department in determining
11 the effectiveness of repair work and the test weights shall be
12 sealed as to their accuracy once each year. However, a person
13 shall not claim to be an official scale inspector and shall
14 not use the test weights except to determine the accuracy of
15 scale repair work done by the person and the person shall not
16 be entitled to a fee for their use.

17 2. ~~A fee shall be charged and collected~~ The department
18 shall impose and collect fees at the time of inspection for
19 the inspection of such weights as follows:

20 a. A laboratory fee of seventy-five dollars per hour.

21 b. A service fee which shall be as follows:

22 (1) All weights up to and including 25
23 pounds.....*\$ 1.10 each

24 (2) Over twenty-five pounds capacity,
25 up to and including 50 pounds..... 2.25 each

26 (3) Over 50 pounds capacity, up to and
27 including 100 pounds..... 3.00 each

28 (4) Over 100 pounds capacity, up to
29 and including 500 pounds..... 4.50 each

30 (5) Over 500 pounds capacity, up to
31 and including 1,000 pounds..... 7.50 each

32 (6) The fee for all tank calibrations shall be as follows:

33 (a) 100 gallons up to and including
34 300 gallons \$ 4.50

35 (b) 301 gallons up to and including

1	500 gallons	7.50
2	(c) 501 gallons up to and including	
3	1,000 gallons	11.25
4	(d) 1,001 gallons up to and including	
5	2,000 gallons	15.00
6	(e) 2,001 gallons up to and including	
7	3,000 gallons	18.00
8	(f) 3,001 gallons up to and including	
9	4,000 gallons	21.00
10	(g) 4,001 gallons up to and including	
11	5,000 gallons	24.00
12	(h) 5,001 gallons up to and including	
13	6,000 gallons	27.00
14	(i) 6,001 gallons up to and including	
15	7,000 gallons	30.00
16	(j) 7,001 gallons and up	37.50

17 3. Calibration shall not be required ~~of~~ for a tank which
18 is not used for the purpose of measuring, or which is equipped
19 with a meter, and vehicle tanks loaded from meters and
20 carrying a printed ticket showing gallonage shall not be
21 required to be calibrated.

22 4. The department shall deposit moneys collected in fees
23 which are imposed under this section into the metrology fund
24 created in section 215.17A.

25 Sec. 22. NEW SECTION. 215.17A METROLOGY FUND.

26 1. A metrology fund is created in the state treasury under
27 the control of the department. The fund is composed of moneys
28 collected in fees required to be paid to the department
29 pursuant to section 215.17. The fund may also include moneys
30 appropriated by the general assembly and moneys available to
31 and obtained or accepted by the department from the United
32 States or private sources for placement in the fund.

33 2. Moneys in the fund are subject to an annual audit by
34 the auditor of state. The metrology fund is subject to
35 warrants written by the director of the department of

1 administrative services, drawn upon the written requisition of
2 the department.

3 3. Moneys in the fund are appropriated exclusively to the
4 department for the exclusive purpose of maintaining,
5 replacing, and upgrading equipment used in the department's
6 metrology laboratory.

7 4. The department may adopt rules pursuant to chapter 17A
8 which are necessary to administer this section.

9 5. Section 8.33 shall not apply to moneys in the fund.
10 Notwithstanding section 12C.7, moneys earned as income or
11 interest from the fund shall remain in the fund until expended
12 as provided in this section.

13 Sec. 23. Section 215.26, Code 2005, is amended by adding
14 the following new subsection:

15 NEW SUBSECTION. 0A. "Commercial scale" means a weighing
16 and measuring device which is used to determine the mass of a
17 body by using the effect of gravity on that body, if the
18 device is in the possession of a person who uses the device as
19 part of a business.

20 Sec. 24. Section 215.26, subsection 1, Code 2005, is
21 amended to read as follows:

22 1. "Commercial weighing and measuring device" or "device"
23 means a weight or measure or weighing or measuring device used
24 to establish size, quantity, area or other quantitative
25 measurement of a commodity sold by weight or measurement, or
26 where the price to be paid for producing the commodity is
27 based upon the weight or measurement of the commodity. The
28 term includes an accessory attached to or used in connection
29 with a commercial weighing or measuring device when the
30 accessory is so designed or installed that its operation may
31 affect the accuracy of the device. Commercial weighing and
32 measuring device includes a public commercial scale as-defined
33 under-section-214-1.

34 Sec. 25. NEW SECTION. 215.27 PENALTIES.

35 1. Except as provided in subsection 2, a person who

1 violates a provision of this chapter commits a simple
2 misdemeanor.

3 2. The state may proceed against a person who violates
4 this chapter by initiating an alternative civil enforcement
5 action in lieu of a prosecution. The alternative civil
6 enforcement action may be brought against the person as a
7 contested case proceeding by the department under chapter 17A
8 or as a civil judicial proceeding by the attorney general upon
9 referral by the department.

10 a. The department shall not impose a civil penalty for the
11 first alleged violation of a provision of this chapter,
12 including a rule adopted pursuant to this chapter. In that
13 case, the department shall issue a letter of warning which
14 includes all of the following:

15 (1) The alleged violator's name, trade name, and address.

16 (2) A description of the alleged violation with specific
17 citation to the statute or administrative rule alleged to have
18 been violated.

19 (3) The location, date, and time of the alleged violation.

20 b. For a violation of the same provision of this chapter,
21 including a rule adopted pursuant to this chapter, arising
22 subsequent to the issuance of a letter of warning, the
23 department may impose, assess, and collect a civil penalty as
24 follows:

25 (1) For the first violation after the letter of warning,
26 the amount of the civil penalty shall not exceed one hundred
27 dollars.

28 (2) For the second violation after the letter of warning,
29 the amount of the civil penalty shall not exceed five hundred
30 dollars.

31 (3) For each subsequent violation after the letter of
32 warning, the amount of the civil penalty shall not exceed one
33 thousand dollars.

34 c. When imposing a civil penalty, the department shall
35 consider the degree and extent of potential harm caused by the

1 violation, the amount of money which the violator obtained as
2 a result of the noncompliance, whether the violation was
3 committed willfully, and the compliance record of the
4 violator.

5 3. a. Except as provided in paragraph "b", the state is
6 precluded from prosecuting a violation pursuant to subsection
7 1, if the state is a party in the alternative civil
8 enforcement action, the department has made a final decision
9 in the contested case proceeding, or a court has entered a
10 final judgment.

11 b. If a party to an alternative civil enforcement action
12 fails to pay the civil penalty to the department within thirty
13 days after the party has exhausted the party's administrative
14 remedies and the party has not sought judicial review in
15 accordance with section 17A.19, the department may order that
16 its final decision be vacated. When the department's final
17 decision is vacated, the state may initiate a criminal
18 prosecution, but shall be precluded from bringing an
19 alternative civil enforcement action. If a party to an
20 alternative civil enforcement action fails to pay the civil
21 penalty within thirty days after a court has entered a final
22 judgment, the department may request that the attorney general
23 petition the court to vacate its final judgment. When the
24 court's judgment has been vacated, the state may initiate a
25 criminal prosecution, but shall be precluded from bringing an
26 alternative civil enforcement action.

27 Sec. 26. NEW SECTION. 215.28 SUSPENSION OF REQUIREMENTS.

28 The department may suspend in whole or in part any
29 requirement of this chapter, including a rule adopted pursuant
30 to this chapter, as applied to an identified person on the
31 basis of the particular circumstances of that person, when the
32 department determines that the suspension promotes the
33 maintenance of good commercial practices within the state.

34 Sec. 27. Section 215A.10, Code 2005, is amended to read as
35 follows:

1 215A.10 PENALTY.

2 1. Every Except as provided in subsection 2, a person who
3 uses or causes to be used a moisture-measuring device in
4 commerce with knowledge that such the moisture-measuring
5 device has not been inspected and approved by the department
6 in-accordance-with-the-provisions-of as provided in this
7 chapter shall-be is guilty of a simple misdemeanor.

8 2. The state may proceed against a person who violates
9 this chapter by initiating an alternative civil enforcement
10 action in lieu of a prosecution. The alternative civil
11 enforcement action may be brought against the person as a
12 contested case proceeding by the department under chapter 17A
13 or as a civil judicial proceeding by the attorney general upon
14 referral by the department.

15 a. The department shall not impose a civil penalty for the
16 first alleged violation of a provision of this chapter,
17 including a rule adopted pursuant to this chapter. In that
18 case, the department shall issue a letter of warning which
19 includes all of the following:

20 (1) The alleged violator's name, trade name, and address.

21 (2) A description of the alleged violation with specific
22 citation to the statute or administrative rule alleged to have
23 been violated.

24 (3) The location, date, and time of the alleged violation.

25 b. For a violation of the same provision of this chapter,
26 including a rule adopted pursuant to this chapter, arising
27 subsequent to the issuance of a letter of warning, the
28 department may impose, assess, and collect a civil penalty as
29 follows:

30 (1) For the first violation after the letter of warning,
31 the amount of the civil penalty shall not exceed one hundred
32 dollars.

33 (2) For the second violation after the letter of warning,
34 the amount of the civil penalty shall not exceed five hundred
35 dollars.

1 (3) For each subsequent violation after the letter of
2 warning, the amount of the civil penalty shall not exceed one
3 thousand dollars.

4 When imposing a civil penalty, the department shall
5 consider the degree and extent of potential harm caused by the
6 violation, the amount of money which the violator obtained as
7 a result of the noncompliance, whether the violation was
8 committed willfully, and the compliance record of the
9 violator.

10 3. a. Except as provided in paragraph "b", the state is
11 precluded from prosecuting a violation pursuant to subsection
12 1, if the state is a party in the alternative civil
13 enforcement action, the department has made a final decision
14 in the contested case proceeding, or a court has entered a
15 final judgment.

16 b. If a party to an alternative civil enforcement action
17 fails to pay the civil penalty to the department within thirty
18 days after the party has exhausted the party's administrative
19 remedies and the party has not sought judicial review in
20 accordance with section 17A.19, the department may order that
21 its final decision be vacated. When the department's final
22 decision is vacated, the state may initiate a criminal
23 prosecution, but shall be precluded from bringing an
24 alternative civil enforcement action. If a party to an
25 alternative civil enforcement action fails to pay the civil
26 penalty within thirty days after a court has entered a final
27 judgment, the department may request that the attorney general
28 petition the court to vacate its final judgment. When the
29 court's judgment has been vacated, the state may initiate a
30 criminal prosecution, but shall be precluded from bringing an
31 alternative civil enforcement action.

32 Sec. 28. NEW SECTION. 215A.11 SUSPENSION OF
33 REQUIREMENTS.

34 The department may suspend in whole or in part any
35 requirement of this chapter, including a rule adopted pursuant

1 to this chapter, as applied to an identified person on the
2 basis of the particular circumstances of that person, when the
3 department determines that the suspension promotes the
4 maintenance of good commercial practices within the state.

5 Sec. 29. NAME CHANGE. Sections 214A.16 and 422.11C, Code
6 2005, are amended by striking the words "motor vehicle fuel
7 pump" or "motor vehicle fuel pumps" and inserting the
8 following: "motor fuel pump" or "motor fuel pumps".

9 Sec. 30. CODE EDITOR DIRECTIVE. The Code editor shall
10 transfer section 215.26 to the beginning of chapter 215.

11 Sec. 31. Section 214A.12, Code 2005, is repealed.

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Johnson co-chair
Hancock co-chair
Ragan
Rielly
Graskill
Hahn

SSB# 3075
Agriculture

Succeeded By
SF/HF 3075

SENATE/HOUSE FILE _____
BY (PROPOSED DEPARTMENT
OF AGRICULTURE AND
LAND STEWARDSHIP BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to devices used for weighing and measuring, by
2 providing for the regulation of the devices, motor vehicle
3 fuel, and persons who service the devices, and providing for
4 fees and penalties.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 214.1, Code 2005, is amended to read as
2 follows:

3 214.1 DEFINITIONS.

4 For the purpose of this chapter:

5 1. "Commercial scale" means the same as defined in section
6 215.26.

7 2. "Commercial weighing and measuring device" or "device"
8 means the same as defined in section 215.26.

9 ~~3. "Motor vehicle fuel" means a substance or~~
10 ~~combination of substances which is intended to be or is~~
11 ~~capable of being used for the purpose of propelling or running~~
12 ~~by combustion any internal combustion engine and is kept for~~
13 ~~sale or sold for that purpose the same as defined in section~~
14 214A.1.

15 ~~2. 4. "Motor vehicle fuel pump" pump meter" means a~~
16 ~~stationary pump, meter, or similar weighing and measuring~~
17 ~~device which is used for measuring retail to measure motor~~
18 ~~vehicle fuel.~~

19 ~~3. "Public scale" shall mean any scale or weighing device~~
20 ~~for the use of which a charge is made or compensation is~~
21 ~~derived.~~

22 5. "Retail dealer" means the same as defined in section
23 214A.1.

24 6. "Wholesale dealer" means the same as defined in section
25 214A.1.

26 Sec. 2. Section 214.2, Code 2005, is amended to read as
27 follows:

28 214.2 LICENSE.

29 A person who uses or displays for use any a commercial
30 weighing and measuring device, ~~as defined in section 215.26~~
31 shall ~~secure~~ obtain a license from the department.

32 Sec. 3. Section 214.3, subsection 1, Code 2005, is amended
33 to read as follows:

34 1. ~~The~~ A license for the inspection of a commercial
35 weighing and measuring device other than for a motor vehicle

1 fuel pump meter shall expire on December 31 of each year~~7-and.~~
 2 A license for the inspection of a motor vehicle fuel pump
 3 meter shall expire on June 30 of each year. The amount of the
 4 fee due for each license shall be as provided in subsection 3,
 5 except that the fee for a motor vehicle fuel pump shall be
 6 four dollars and fifty cents if paid within one month from the
 7 date the license is due. A person shall apply to the
 8 department to be issued a license or to renew a license as
 9 provided by the department. The person shall pay the
 10 department a license fee as provided in section 214.3A.

11 Sec. 4. Section 214.3, subsection 3, Code 2005, is amended
 12 by striking the subsection.

13 Sec. 5. NEW SECTION. 214.3A LICENSE FEE SCHEDULE.

14 The department shall charge a fee for a license that it
 15 issues or renews pursuant to section 214.3. The fee shall be
 16 submitted with the license application. The amount of the fee
 17 is as follows:

18 1. For commercial scales, the fee shall be based on its
 19 capacity as follows:

- 20 a. Five hundred pounds or less, nine dollars.
- 21 b. More than five hundred pounds but not more than five
 22 thousand pounds, sixteen dollars and fifty cents.
- 23 c. More than five thousand pounds but not more than fifty
 24 thousand pounds, forty-six dollars and fifty cents.
- 25 d. More than fifty thousand pounds but not more than one
 26 hundred twenty thousand pounds, eighty-four dollars.
- 27 e. More than one hundred twenty thousand pounds, one
 28 hundred six dollars and fifty cents.

29 2. For meters, the fee shall be based on the type of meter
 30 as follows:

- 31 a. A motor vehicle fuel pump meter which is used by a
 32 retail dealer, four dollars and fifty cents if the fee is paid
 33 before August 1 after the date that license expires as
 34 provided in section 214.3. The fee shall be nine dollars if
 35 the fee is paid on or after August 1.

S.F. _____ H.F. _____

- 1 b. A mass bulk meter, nine dollars.
- 2 c. A refined or bulk meter, nine dollars.
- 3 d. A stationary bulk fuel meter, nine dollars.
- 4 e. A stationary liquid petroleum gas meter, nine dollars.
- 5 f. A moisture meter, twenty-four dollars.
- 6 g. A liquid petroleum bulk truck meter, fifty-two dollars
- 7 and fifty cents.

8 Sec. 6. Section 214.4, subsection 1, unnumbered paragraph
9 1, Code 2005, is amended to read as follows:

10 If the department does not receive payment of the license
11 fee required pursuant to section ~~214.3~~ 214.3A within one month
12 from the due date, the department shall send a notice to the
13 owner or operator of the device. The notice shall be
14 delivered by certified mail. The notice shall state all of
15 the following:

16 Sec. 7. Section 214.4, subsection 1, paragraph b, Code
17 2005, is amended to read as follows:

18 b. The owner or operator has fifteen days after receipt of
19 the notice to pay the license fee ~~required-pursuant-to-section~~
20 ~~214.3~~.

21 Sec. 8. Section 214.5, Code 2005, is amended to read as
22 follows:

23 214.5 INSPECTION STICKERS.

24 1. For each If the department licenses a commercial
25 weighing and measuring device licensed pursuant to section
26 214.2, the department shall also issue an inspection sticker,
27 which upon its inspection and approval of the device.

28 2. The inspection sticker shall not exceed two inches by
29 two inches in size. The inspection sticker shall be displayed
30 prominently on the front of the commercial weighing and
31 measuring device. and-the-defacing-or-wrongful-removal-of-the

32 3. A person shall not deface or wrongfully remove an
33 inspection sticker shall-be-punished-as-provided-in-chapter
34 189.

35 4. Absence The absence of an inspection sticker on a

1 commercial weighing and measuring device is prima facie
2 evidence that the ~~commercial-weighing-and-measuring~~ device is
3 being operated contrary to law.

4 Sec. 9. Section 214.6, Code 2005, is amended to read as
5 follows:

6 214.6 OATH OF WEIGHMASTERS.

7 ~~All-persons-keeping-public-scales~~ A person who keeps a
8 commercial scale, before entering-upon-their engaging in the
9 person's duties as weighmasters a weighmaster, shall be sworn
10 before some a person having authority to administer oaths, to.
11 The person who takes the oath shall swear to keep their the
12 person's scales correctly balanced, to make true weights, and
13 to render a correct account to the person having who requests
14 that a weighing done be performed.

15 Sec. 10. Section 214.8, Code 2005, is amended to read as
16 follows:

17 214.8 ~~PENALTY~~ PENALTIES -- LIABILITY FOR DAMAGES.

18 1. Any-weighmaster-violating-any-of-the-provisions-of
19 sections-214.6-and-214.7, shall-be Except as provided in
20 subsection 2, a person who violates a provision of this
21 chapter is guilty of a simple misdemeanor, and-be. Each day
22 that a continuing violation occurs shall be considered a
23 separate offense.

24 2. The state may proceed against a person who violates
25 this chapter by initiating an alternative civil enforcement
26 action in lieu of a prosecution. The alternative civil
27 enforcement action may be brought against the person as a
28 contested case proceeding by the department under chapter 17A
29 or as a civil judicial proceeding by the attorney general upon
30 referral by the department. The department may impose,
31 assess, and collect the civil penalty. The civil penalty
32 shall be for at least one hundred dollars but not more than
33 one thousand dollars for each violation. Each day that a
34 continuing violation occurs shall be considered a separate
35 offense.

1 a. Except as provided in paragraph "b", the state is
2 precluded from prosecuting a violation pursuant to subsection
3 1, if the state is a party in the alternative civil
4 enforcement action, the department has made a final decision
5 in the contested case proceeding, or a court has entered a
6 final judgment.

7 b. If a party to an alternative civil enforcement action
8 fails to pay the civil penalty to the department within thirty
9 days after the party has exhausted the party's administrative
10 remedies and the party has not sought judicial review in
11 accordance with section 17A.19, the department may order that
12 its final decision be vacated. When the department's final
13 decision is vacated, the state may initiate a criminal
14 prosecution, but shall be precluded from bringing an
15 alternative civil enforcement action. If a party to an
16 alternative civil enforcement action fails to pay the civil
17 penalty within thirty days after a court has entered a final
18 judgment, the department may request that the attorney general
19 petition the court to vacate its final judgment. When the
20 court's judgment has been vacated, the state may initiate a
21 criminal prosecution, but shall be precluded from bringing an
22 alternative civil enforcement action.

23 3. A person who violates a provision of this chapter is
24 liable to the a person who is injured as a result of the
25 violation for all damages sustained.

26 Sec. 11. Section 214.9, Code 2005, is amended to read as
27 follows:

28 214.9 SELF-SERVICE MOTOR VEHICLE FUEL PUMPS PUMP METERS.

29 Self-service A self-service motor vehicle fuel pumps pump
30 meter located at a motor vehicle fuel stations station may be
31 equipped with an automatic latch-open devices device on the
32 fuel dispensing hose nozzle only if the nozzle valve is the
33 automatic closing type.

34 Sec. 12. Section 214.10, Code 2005, is amended to read as
35 follows:

1 214.10 RULES.

2 The department of-agriculture-and-land-stewardship may
3 promulgate adopt rules pursuant to chapter 17A as necessary to
4 promptly and effectively enforce the provisions of this
5 chapter.

6 Sec. 13. Section 214.11, Code 2005, is amended to read as
7 follows:

8 214.11 INSPECTIONS -- RECALIBRATIONS -- PENALTY.

9 The department of-agriculture-and-land-stewardship shall
10 provide for an annual inspections inspection of all each motor
11 vehicle fuel pumps pump meter which is licensed under this
12 chapter. Inspections The inspection shall be-for-the-purpose
13 of-determining determine the accuracy of the pumps-measuring
14 mechanisms,-and-for-such-purpose-the-department's-inspectors
15 meter and the correctness of associated equipment. In order
16 to carry out an inspection, the department may enter upon the
17 premises of any a wholesale dealer or retail dealer,-as-they
18 are-defined-in-section-214A.1, of motor vehicle fuel or a
19 person selling or offering to sell fuel oil within this state.
20 Upon completion of an inspection, the inspector shall affix
21 the department's seal to the measuring mechanism of the motor
22 vehicle fuel pump meter. The seal shall be appropriately
23 marked, dated, and recorded by the inspector. If the owner of
24 an inspected and sealed motor vehicle fuel pump meter is
25 registered with the department as a servicer in accordance
26 with section 215.23, or employs a person so registered as a
27 servicer, the owner or other servicer may open the motor
28 vehicle fuel pump meter's dispenser, break the department's
29 seal, recalibrate the measuring mechanism if necessary, and
30 reseal the motor vehicle fuel pump as-long-as meter, if the
31 department is notified of the recalibration within forty-
32 eight hours, on a form provided by the department. A-person
33 violating-a-provision-of-this-section-is,-upon-conviction,-
34 guilty-of-a-simple-misdemeanor.

35 Sec. 14. Section 214A.1, Code 2005, is amended by adding

1 the following new subsection:

2 NEW SUBSECTION. 2A. "Motor vehicle fuel pump meter" means
3 the same as defined in section 214.1.

4 Sec. 15. Section 214A.5, Code 2005, is amended to read as
5 follows:

6 214A.5 SALES SLIP ON DEMAND.

7 1. Each A wholesale dealer or retail dealer ~~in-this-state~~
8 shall, when making a sale of motor vehicle fuel, give to each
9 a purchaser upon demand a sales slip, ~~upon-which-must-be~~
10 ~~printed-the-words-"This-motor-vehicle-fuel-conforms-to-the~~
11 ~~standard-of-specifications-required-by-the-state-of-Iowa."~~

12 2. Each A wholesale dealer in this state shall, when
13 making a sale of oxygenate octane enhancer, give to each a
14 purchaser upon demand a sales slip upon which must be printed
15 the words "This oxygenate octane enhancer conforms to the
16 standard specifications required by the state of Iowa."

17 Sec. 16. Section 214A.7, Code 2005, is amended to read as
18 follows:

19 214A.7 DEPARTMENT INSPECTION -- SAMPLES TESTED.

20 The department, ~~its-agents-or-employees,~~ shall, from time
21 to time, make or cause to be made tests of any motor vehicle
22 fuel or oxygenate octane enhancer which is being sold, or held
23 or offered for sale within this state, ~~and-for-such-purposes~~
24 ~~the-inspectors-have-the-right-to.~~ An inspector may enter upon
25 the premises of any wholesale dealer or retail dealer ~~of-motor~~
26 ~~vehicle-fuel-or-oxygenate-octane-enhancer-within-this-state,~~
27 and ~~to~~ take from any container a sample of the motor vehicle
28 fuel or oxygenate octane enhancer, not to exceed eight sixteen
29 fluid ounces. The sample shall be sealed and appropriately
30 marked or labeled by the inspector and delivered to the
31 department. The department shall make, or cause to be made,
32 complete analyses or tests of the motor vehicle fuel or
33 oxygenate octane enhancer by the methods specified in section
34 214A.2.

35 Sec. 17. Section 214A.11, Code 2005, is amended to read as

1 follows:

2 214A.11 VIOLATIONS PENALTIES.

3 1. Any Except as provided in subsection 2, a person
4 violating the provisions who violates a provision of this
5 chapter shall be is guilty of a simple misdemeanor. Each day
6 that a continuing violation occurs shall be considered a
7 separate offense.

8 2. The state may proceed against a person who violates
9 this chapter by initiating an alternative civil enforcement
10 action in lieu of a prosecution. The alternative civil
11 enforcement action may be brought against the person as a
12 contested case proceeding by the department under chapter 17A
13 or as a civil judicial proceeding by the attorney general upon
14 referral by the department. The department may impose,
15 assess, and collect the civil penalty. The civil penalty
16 shall be for at least one hundred dollars but not more than
17 one thousand dollars for each violation. Each day that a
18 continuing violation occurs shall be considered a separate
19 offense.

20 a. Except as provided in paragraph "b", the state is
21 precluded from prosecuting a violation pursuant to subsection
22 1, if the state is a party in the alternative civil
23 enforcement action, the department has made a final decision
24 in the contested case proceeding, or a court has entered a
25 final judgment.

26 b. If a party to an alternative civil enforcement action
27 fails to pay the civil penalty to the department within thirty
28 days after the party has exhausted the party's administrative
29 remedies and the party has not sought judicial review in
30 accordance with section 17A.19, the department may order that
31 its final decision be vacated. When the department's final
32 decision is vacated, the state may initiate a criminal
33 prosecution, but shall be precluded from bringing an
34 alternative civil enforcement action. If a party to an
35 alternative civil enforcement action fails to pay the civil

1 penalty within thirty days after a court has entered a final
2 judgment, the department may request that the attorney general
3 petition the court to vacate its final judgment. When the
4 court's judgment has been vacated, the state may initiate a
5 criminal prosecution, but shall be precluded from bringing an
6 alternative civil enforcement action.

7 Sec. 18. Section 214A.16, Code 2005, is amended to read as
8 follows:

9 214A.16 NOTICE OF BLENDED FUEL -- DECAL.

10 If motor vehicle fuel containing a renewable fuel is sold
11 from a motor vehicle fuel pump meter, the pump motor vehicle
12 fuel pump meter shall have affixed a decal identifying the
13 name of the renewable fuel. The decal may be different based
14 on the type of renewable fuel used. The design and location
15 of the decal shall be prescribed by rules adopted by the
16 department. A decal identifying a renewable fuel shall be
17 consistent with standards adopted pursuant to section 159A.6.
18 The department may approve an application to place a decal in
19 a special location on a motor vehicle fuel pump meter or
20 container or use a decal with special lettering or colors, if
21 the decal appears clear and conspicuous to the consumer. The
22 application shall be made in writing pursuant to procedures
23 adopted by the department.

24 Sec. 19. Section 215.1, Code 2005, is amended to read as
25 follows:

26 215.1 DUTY TO INSPECT.

27 The department shall regularly inspect all commercial
28 weighing and measuring devices, and when complaint is made to
29 the department that any false or incorrect weights weight or
30 measures-are measure is being made, the department shall
31 inspect the commercial weighing and measuring devices which
32 caused the complaint. The department may also inspect the
33 reliability of a commercial scanner to determine its accuracy.
34 The department may conduct a random inspection of prepacked
35 goods to determine whether the goods' weight is recorded

1 accurately.

2 Sec. 20. Section 215.2, Code 2005, is amended to read as
3 follows:

4 215.2 SPECIAL INSPECTION REQUEST -- FEES.

5 The fee for a special tests test, including but not limited
6 to, using state inspection equipment, for the calibration,
7 testing, certification, or repair of a commercial weighing and
8 measuring device shall be paid by the servicer or person
9 requesting the special test ~~in accordance with the following~~
10 schedule. The amount of the inspection fee shall be as
11 follows:

12 1. Class-S₇-scales For a commercial scale, seventy-five
13 dollars per hour.

14 2. Class-M₇-meters For a meter, fifty-two dollars and
15 fifty cents per hour.

16 Sec. 21. Section 215.4, Code 2005, is amended to read as
17 follows:

18 215.4 TAG FOR INACCURATE DEVICE -- REINSPECTION -- FEE.

19 A commercial weighing and measuring device found to be
20 inaccurate upon inspection by the department shall be tagged
21 "~~condemned~~ rejected until ~~repaired~~ repaired and the "licensed
22 for commercial use" inspection sticker shall be removed. If
23 notice is received by the department that the device has been
24 repaired and upon reinspection the device is found to be
25 accurate, the license fee shall not be charged for the
26 reinspection. However, a second license fee shall be charged
27 if upon reinspection the device is found to be inaccurate. If
28 at a third reinspection the device is found to be inaccurate,
29 the license fee shall be charged and the device shall be
30 tagged "condemned" and removed from service.

31 Sec. 22. Section 215.9, Code 2005, is amended to read as
32 follows:

33 215.9 POWER OF CITIES LIMITED.

34 ~~Commodities~~ A city ordinance shall not require that a
35 commodity be weighed upon-any-scale-bearing-the-inspection

1 ~~card~~-issued-by or measured if the commodity is weighed or
2 measured by a commercial weighing and measuring device
3 licensed by the department~~-shall-not-be-required-to-be~~
4 ~~reweighed-by-any-ordinance-of-any-city~~~~-nor-shall-their.~~ A
5 city ordinance shall not restrict the sale of a commodity at
6 the weights so a weight or measure ascertained~~-and-because~~
7 ~~thereof~~~~-be~~~~-by-such-ordinance~~~~-prohibited-or-restricted~~ by a
8 commercial weighing and measuring device licensed by the
9 department.

10 Sec. 23. Section 215.10, Code 2005, is amended to read as
11 follows:

12 215.10 INSTALLATION OF NEW SCALES.

13 ~~1. It shall be unlawful to~~ A person shall not install a
14 commercial scale used for commercial purposes in this state,
15 unless the commercial scale is so installed that it is easily
16 accessible for inspection and testing by equipment of the
17 department, ~~and~~ with due regard to the scale's size and
18 capacity. The installation shall be made consistent with the
19 requirements of section 215.18 and rules adopted by the
20 department.

21 2. Every A commercial scale manufacturer or dealer shall,
22 upon selling a commercial scale ~~of the above types in Iowa,~~
23 submit to the department upon forms provided by the
24 department, the make, capacity of the scale, the date of sale,
25 and the date and location of its installation.

26 Sec. 24. Section 215.15, Code 2005, is amended to read as
27 follows:

28 215.15 SCALE PIT.

29 ~~Scale~~ A scale pit shall ~~have~~ be installed to ensure that
30 there is proper room for an inspector or service person to
31 repair or inspect the scale. ~~Scale~~ The installation shall be
32 made consistent with the requirements of section 215.18 and
33 rules adopted by the department. The scale pit shall remain
34 dry at all times and adequate drainage shall be provided for
35 the purpose of inspecting and cleaning.

1 Sec. 25. Section 215.17, Code 2005, is amended to read as
2 follows:

3 215.17 TEST WEIGHTS TO BE USED.

4 1. A person engaged in scale repair work for hire shall
5 use only test weights sealed by the department in determining
6 the effectiveness of repair work and the test weights shall be
7 sealed as to their accuracy once each year. However, a person
8 shall not claim to be an official scale inspector and shall
9 not use the test weights except to determine the accuracy of
10 scale repair work done by the person and the person shall not
11 be entitled to a fee for their use.

12 ~~2. A fee shall be charged and collected~~ The department
13 shall impose and collect fees at the time of inspection for
14 the inspection of such weights as follows:

15 a. A laboratory fee of seventy-five dollars per hour.

16 b. A service fee which shall be as follows:

17 (1) All weights up to and including 25
18 pounds..... \$ 1.10 each

19 (2) Over twenty-five pounds capacity,
20 up to and including 50 pounds..... 2.25 each

21 (3) Over 50 pounds capacity, up to and
22 including 100 pounds..... 3.00 each

23 (4) Over 100 pounds capacity, up to
24 and including 500 pounds..... 4.50 each

25 (5) Over 500 pounds capacity, up to
26 and including 1,000 pounds..... 7.50 each

27 (6) The fee for all tank calibrations shall be as follows:

28 (a) 100 gallons up to and including
29 300 gallons \$ 4.50

30 (b) 301 gallons up to and including
31 500 gallons 7.50

32 (c) 501 gallons up to and including
33 1,000 gallons 11.25

34 (d) 1,001 gallons up to and including
35 2,000 gallons 15.00

1	(e) 2,001 gallons up to and including	
2	3,000 gallons	18.00
3	(f) 3,001 gallons up to and including	
4	4,000 gallons	21.00
5	(g) 4,001 gallons up to and including	
6	5,000 gallons	24.00
7	(h) 5,001 gallons up to and including	
8	6,000 gallons	27.00
9	(i) 6,001 gallons up to and including	
10	7,000 gallons	30.00
11	(j) 7,001 gallons and up	37.50

12 3. Calibration shall not be required ~~of~~ for a tank which
13 is not used for the purpose of measuring, or which is equipped
14 with a meter, and vehicle tanks loaded from meters and
15 carrying a printed ticket showing gallonage shall not be
16 required to be calibrated.

17 4. The department shall deposit moneys collected in fees
18 which are imposed under this section into the metrology fund
19 created in section 215.17A.

20 Sec. 26. NEW SECTION. 215.17A METROLOGY FUND.

21 1. A metrology fund is created in the state treasury under
22 the control of the department. The fund is composed of moneys
23 collected in fees required to be paid to the department
24 pursuant to section 215.17. The fund may also include moneys
25 appropriated by the general assembly and moneys available to
26 and obtained or accepted by the department from the United
27 States or private sources for placement in the fund.

28 2. Moneys in the fund are subject to an annual audit by
29 the auditor of state. The metrology fund is subject to
30 warrants written by the director of the department of
31 administrative services, drawn upon the written requisition of
32 the department.

33 3. Moneys in the fund are appropriated exclusively to the
34 department for the exclusive purpose of maintaining,
35 replacing, and upgrading equipment used in the department's

1 metrology laboratory.

2 4. The department may adopt rules pursuant to chapter 17A
3 which are necessary to administer this section.

4 5. Section 8.33 shall not apply to moneys in the fund.
5 Notwithstanding section 12C.7, moneys earned as income or
6 interest from the fund shall remain in the fund until expended
7 as provided in this section.

8 Sec. 27. Section 215.26, Code 2005, is amended by adding
9 the following new subsections:

10 NEW SUBSECTION. 0A. "Commercial scale" means a weighing
11 and measuring device which is used to determine the mass of a
12 body by using the effect of gravity on that body, if the
13 device is in the possession of a person who uses the device as
14 part of a business.

15 NEW SUBSECTION. 0B. "Commercial scanner" means an
16 electronic system that uses a laser bar code reader to
17 retrieve product identity, price, or other information stored
18 in the memory of a computer as defined in section 22.3A.

19 Sec. 28. Section 215.26, subsection 1, Code 2005, is
20 amended to read as follows:

21 1. "Commercial weighing and measuring device" or "device"
22 means a weight or measure or weighing or measuring device used
23 to establish size, quantity, area or other quantitative
24 measurement of a commodity sold by weight or measurement, or
25 where the price to be paid for producing the commodity is
26 based upon the weight or measurement of the commodity. The
27 term includes an accessory attached to or used in connection
28 with a commercial weighing or measuring device when the
29 accessory is so designed or installed that its operation may
30 affect the accuracy of the device. Commercial weighing and
31 measuring device includes a public commercial scale as-defined
32 under-section-214-1.

33 Sec. 29. NEW SECTION. 215.27 PENALTIES.

34 1. Except as provided in subsection 2, a person who
35 violates a provision of this chapter commits a simple

1 misdemeanor. Each day that a continuing violation occurs
2 shall be considered a separate offense.

3 2. The state may proceed against a person who violates
4 this chapter by initiating an alternative civil enforcement
5 action in lieu of a prosecution. The alternative civil
6 enforcement action may be brought against the person as a
7 contested case proceeding by the department under chapter 17A
8 or as a civil judicial proceeding by the attorney general upon
9 referral by the department. The department may impose,
10 assess, and collect the civil penalty. The civil penalty
11 shall be for at least one hundred dollars but not more than
12 one thousand dollars for each violation. Each day that a
13 continuing violation occurs shall be considered a separate
14 offense.

15 a. Except as provided in paragraph "b", the state is
16 precluded from prosecuting a violation pursuant to subsection
17 1, if the state is a party in the alternative civil
18 enforcement action, the department has made a final decision
19 in the contested case proceeding, or a court has entered a
20 final judgment.

21 b. If a party to an alternative civil enforcement action
22 fails to pay the civil penalty to the department within thirty
23 days after the party has exhausted the party's administrative
24 remedies and the party has not sought judicial review in
25 accordance with section 17A.19, the department may order that
26 its final decision be vacated. When the department's final
27 decision is vacated, the state may initiate a criminal
28 prosecution, but shall be precluded from bringing an
29 alternative civil enforcement action. If a party to an
30 alternative civil enforcement action fails to pay the civil
31 penalty within thirty days after a court has entered a final
32 judgment, the department may request that the attorney general
33 petition the court to vacate its final judgment. When the
34 court's judgment has been vacated, the state may initiate a
35 criminal prosecution, but shall be precluded from bringing an

1 alternative civil enforcement action.

2 Sec. 30. Section 422.11C, subsection 1, paragraph c, Code
3 2005, is amended to read as follows:

4 c. "Metered pump" means a motor vehicle fuel pump meter
5 licensed by the department of agriculture and land stewardship
6 pursuant to chapter 214.

7 Sec. 31. CODE EDITOR DIRECTIVE. The Code editor shall
8 transfer section 215.26 to the beginning of chapter 215.

9 Sec. 32. Section 214A.12, Code 2005, is repealed.

10 EXPLANATION

11 This bill amends Code chapters 214, 214A, and 215, which
12 regulate commercial weighing and measuring devices such as
13 scales and meters, and also provide for the inspection of
14 weights and measures, by the department of agriculture and
15 land stewardship. In general, Code chapter 214 regulates
16 devices and Code chapter 215 regulates service agencies
17 engaged in the business of installing, servicing, or repairing
18 these devices. Code chapter 214A generally regulates the
19 storage and dispensing of motor vehicle fuel at the wholesale
20 and retail levels. The three Code chapters contain some
21 overlapping provisions.

22 The bill changes the names of terms used in the Code
23 chapters. It changes the term "motor vehicle fuel pump" to
24 "motor vehicle fuel pump meter" and "public scale" to
25 "commercial scale". The bill defines these terms and makes
26 the use of terms consistent throughout all three Code
27 chapters. It also rewrites language in the chapters for
28 consistency and readability.

29 Many of the provisions in Code chapters 214 and 215 relate
30 to licensure and inspection requirements. The bill rewrites a
31 provision in Code chapter 214 which increases the fees charged
32 for both issuing and renewing a license. Under Code section
33 214.3, the license fee is generally based on the capacity of
34 the device or the type of device in service. The bill
35 eliminates a number of names for specific scales (counter

1 scales, portable platform scales, livestock monorail scales,
2 single animal scales, grain test scales, and precious metal
3 and gems scales). It amends provisions in Code section 215.17
4 to establish an hourly laboratory fee. It also provides that
5 all inspection fees enumerated in that section must be
6 deposited into a trust fund under the control of the
7 department for its use in maintaining, replacing, and
8 upgrading equipment used in the metrology laboratory.

9 The bill includes special penalty provisions in each of the
10 Code chapters. These chapters are codified in Title V,
11 subtitle 4, of the Code. Code section 189.21 provides a
12 general penalty for a violation of a provision in the
13 subtitle. The penalty is a simple misdemeanor. Code sections
14 214.8 and 214A.11 have duplicative penalty provisions. A
15 simple misdemeanor is punishable by confinement for no more
16 than 30 days or a fine of at least \$50 but not more than \$500
17 or by both. The bill provides that the state may proceed
18 against a person who violates a provision in one of these
19 chapters by initiating an alternative civil enforcement action
20 in lieu of a criminal prosecution. The amount of the civil
21 penalty ranges from \$100 to \$1,000. An alternative civil
22 enforcement action may be brought as a contested case
23 proceeding within the department under the Iowa administrative
24 procedure Act (Code chapter 17A) or as a court case by the
25 attorney general. If the state brings an alternative civil
26 enforcement action, it is precluded from bringing a criminal
27 prosecution. There is one exception. If the party found in
28 violation of the law fails to pay the civil penalty to the
29 department within a 30-day period, the department may take
30 steps to vacate the administrative order or court judgment
31 which imposed the civil penalty and the state may initiate the
32 criminal prosecution, but is precluded from bringing a new
33 alternative civil enforcement action.

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