

## Assembly Bill No. 376

### CHAPTER 364

An act to repeal and add Chapter 5.5 (commencing with Section 12531) of Division 5 of the Business and Professions Code, relating to weights and measures, and making an appropriation therefor.

[Became law without Governor's signature. Filed  
with Secretary of State September 8, 1999.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 376, Floyd. Weights and measures: device repair: service agencies.

(1) Existing law provides a comprehensive scheme for the regulation of device repairmen, defined as persons who engage in the business of installing, adjusting, servicing, or repairing commercial weighing or measuring devices, as defined. Existing law makes it unlawful to engage in that business unless registered with the Director of Food and Agriculture, as specified.

This bill would revise and recast those regulatory provisions and, among other things, provide for the registration of service agencies, defined to mean any person that repairs a commercial device, designed to be used for determining weight or measure. The bill would set forth certain registration requirements for service agencies, provide for a written examination for the licensing of service agents on and after January 1, 2001, establish a 7-member advisory committee, and prescribe the grounds and procedures for the denial, suspension, or revocation of a service agency's registration. The bill would require prescribed fees to accompany an application for service agency registration and would require those fees to be deposited in the Food and Agriculture Fund, a continuously appropriated fund, thereby making an appropriation. Because, under existing law, a violation of these requirements would be a crime, the bill would impose a state-mandated local program by creating new crimes.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Appropriation: yes.

*The people of the State of California do enact as follows:*

SECTION 1. Chapter 5.5 (commencing with Section 12531) of Division 5 of the Business and Professions Code is repealed.

SEC. 2. Chapter 5.5 (commencing with Section 12531) is added to Division 5 of the Business and Professions Code, to read:

CHAPTER 5.5. SERVICE AGENCIES FOR WEIGHING AND MEASURING DEVICES

Article 1. Definitions

12531. As used in this chapter, the following definitions are applicable:

(a) "Service agency" means any person, as defined in Section 12011, that for hire, award, commission, or any other payment of any kind, repairs a commercial device.

(b) "Service agent" means any person employed by a service agency to repair a commercial device.

(c) "Device" means any weighing or measuring equipment, contrivance, or instrument used, or designed to be used, for determining weight or measure, and includes any tool, appliance, or accessory used in connection therewith, that is used for commercial purposes as defined in subdivision (e) of Section 12500.

(d) "Placed in service" means to permit the use of a device that has been tested and found to be correct, as defined in subdivision (c) of Section 12500, and type approved, as provided for in Section 12500.5, or to submit a device to a sealer for verification prior to installation.

(e) "Correct" means any device that meets all of the tolerance and specification requirements of Section 12107.

(f) "Repair," in any of its variant forms, means to provide maintenance, or to install, adjust, recondition, or service a device.

Article 2. Registration

12532. (a) No person shall engage in business as a service agency unless registered by the Secretary of Food and Agriculture pursuant to this chapter and unless the current registration fee and any penalty has been paid.

(b) Applications for registration shall be in writing on a form prescribed by the department, and shall be accompanied by the required fee.

(c) A service agency shall forward to the department the name or names of service agents employed by them, with the appropriate fees required by Section 12535.



(d) A device may only be placed in service by a sealer or a service agency. A device used by a public utility in connection with measuring gas, electricity, water, steam, or communication service subject to the jurisdiction of the Public Utility Commission is exempt from the requirements of this chapter.

(e) Except as provided in subdivision (f), no person who repairs a device is required to be registered if the device is placed into service by a sealer or service agency.

(f) Vapor measuring devices operating at greater than 11 inches water column shall be installed by a service agency.

(g) In the event of any change in the legal status of a registered service agency, the new legal entity shall obtain a new registration prior to operating as a service agency.

(h) A service agency may employ or designate a licensed service agent to act for the service agency and shall be responsible for all acts of that person.

12533. Prior to the issuance of its registration or in order to maintain its current registration, a service agency shall do all of the following:

(a) (1) Possess, or have available for use, standards and testing equipment necessary to meet the minimum testing requirements contained in the "Notes" section of the specific device regulation set forth in Division 9 (commencing with Section 4000) of Title 4 of the California Code of Regulations, for each type of device for which the service agency is providing service.

(2) When applicable, the standards and testing equipment shall meet the specifications and tolerances published in the most current National Institute of Standards and Technology 105 Series Handbooks for Field Standard Weights (NIST Class F), Field Standard Measuring Flasks, and Graduated Neck Type Volumetric Field Standards.

(b) Ensure that every service agent in its employ has a current service agent license.

(c) Possess a current copy of Division 9 (commencing with Section 4000) of Title 4 of the California Code of Regulations, Field Reference Manual.

12534. Commencing January 1, 2001, a service agency shall use suitable and sufficient standards that are permanently and uniquely identified, and have a current certificate of accuracy provided by the department or by a laboratory certified pursuant to Section 12314, in the determination of a correct device.

### Article 3. Fees

12535. (a) An application for service agency registration shall be accompanied by an annual fee of two hundred dollars (\$200) for a primary maintenance location, and one hundred dollars (\$100) for



each additional maintenance location of the applicant, and twenty-five dollars (\$25) for every person employed by a service agency as a service agent.

(b) Each registration required by this chapter shall be renewed annually, on or before the first day of the first month of the service agency's registration year, by application to the department, accompanied by the annual registration fee. "Registration year" means the period of time beginning with the first day of the month the service agency is required to be registered in this state, and ending one year from date of issuance of the registration.

12536. Fees received by the department pursuant to this chapter shall be paid into the State Treasury to the credit of the Food and Agriculture Fund to be used for the administration and enforcement of this chapter.

12537. Sixty percent of the funds derived pursuant to this chapter shall be allocated by the secretary to counties that employ a sealer or director of weights and measures. The payment to each county shall be in proportion to the funds expended by the county in the enforcement of Division 5 (commencing with Section 12001).

#### Article 4. Examinations

12540. (a) Commencing on January 1, 2001, no person shall be employed by a service agency as a service agent unless he or she possesses a current license.

(b) Commencing on January 1, 2001, applicants for a service agent license shall pass a written examination on the laws and regulations governing weights and measures. A passing score of 70 percent or greater is required to qualify for a license pursuant to this chapter. Examinations developed by the department may be taken by appointment in any county sealer's office or at a location designated by the Division of Measurement Standards.

(c) An application for the examination to obtain a service agent license shall be in a form prescribed by the department and shall be accompanied by a fee established by the secretary to recover costs of examination administration, payable to the county in which the examination is given, or to the Division of Measurement Standards, if the examination is given by the department.

(d) Every service agent shall be reexamined every five years. To maintain a service agent license, the reexamination shall be taken and passed on or before the date on which the examination was last taken and passed.

#### Article 5. Advisory Committee

12541. (a) The department shall establish a seven-member advisory committee consisting of the following members:



- (1) Two members representing registered service agencies.
  - (2) Two members representing county sealers or directors of weights and measures.
  - (3) One member representing device manufacturers.
  - (4) One member representing industry clients of service agencies.
  - (5) One member representing the general public.
- (b) Except as provided in subdivision (c), the term of office of the members of the committee is three years. Vacancies shall be filled by the department for any unexpired term.
- (c) Initial appointments to the committee shall be made as follows:
- (1) One representative of registered service agencies, and one representative of county sealers or directors of weights and measures shall be appointed for one year.
  - (2) One representative of device manufacturers, one representative of county sealers or directors of weights and measures, and one representative of industry clients of service agencies shall be appointed for two years.
  - (3) One representative of registered service agencies, and one representative of the general public shall be appointed for three years.
- (d) The committee shall be advisory to the department in all matters concerning the registration of service agencies.

#### Article 6. Disciplinary Action

12542. A service agency registration may be suspended for the actions of its service agents in violation of this division. A service agency's registration may be revoked or suspended, or may be denied by the department, for any violation of this chapter. Proceedings for the denial, revocation, or suspension of a registration shall be in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The department shall have all of the powers that are granted therein.

12543. A service agency's authorization to place devices into service, or to remove out-of-order notices may be suspended by a county sealer, within his or her county, pursuant to the notice and hearing provisions described in Section 12544 for violations of this division.

12544. (a) A county sealer intending to suspend the authorization of a service agency shall notify the service agency in writing of all of the following:

- (1) The alleged violations to be used as the basis for suspension.
- (2) The proposed duration of the suspension.
- (3) The date the suspension is to begin, which may not be sooner than 20 days after a notice is mailed.



(4) The names of service agents to be affected by the suspension.

(5) The fact that the service agency or service agent shall be provided the opportunity for an investigational hearing prior to the suspension.

(6) The fact that the service agency or service agent may be represented by legal counsel.

(7) The fact that the service agency or service agent may appeal to the department prior to imposition of a suspension.

(b) A copy of the proposed action to the service agency shall be immediately forwarded to the department.

(c) The department may, as a result of the investigative hearing, declare the suspension to be effective in additional counties.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

