

## CHAPTER 239

## DEPARTMENT OF WEIGHTS AND MEASURES

**239.01 DEPARTMENT CREATED; JURISDICTION OF COMMISSION.**

**HISTORY.** G.S. 1878 c. 21 ss. 1, 2; 1911 c. 156 s. 1; G.S. 1913 s. 4611; G.S. 1923 s. 5270; M.S. 1927 s. 5270.

Laws 1911, Chapter 156, creating a department of weights and measures, fixing standard weights and measures, and providing among other things, that it shall be a misdemeanor for anyone to "sell or offer or expose for sale less than the quantity he represents" covers any case where an actual misrepresentation of the quantity sold, or offered or exposed for sale, is made, whether such misrepresentation is accomplished by the direct and immediate use of false weights or measures or not. The acts prohibited are mala prohibita of which neither specific intent, fraud, nor deception is an element. *State v Armour*, 118 M 128, 136 NW 565.

Sale in packages is not forbidden. The thing penalized by the statute is misrepresentation of quantity; and where it is tacitly agreed between the seller and the buyer, that an offer of sale includes the weight indicated by the wrappings of the commodity, the penalty of the statute does not attach. *State v Armour*, 118 M 128, 136 NW 565.

Statutory provisions relative to weighing control as against any charter or ordinance provision on the same subject but where the municipal ordinance does not conflict with the statute, are valid and enforceable. *State v Eck*, 121 M 202, 141 NW 106.

This statute is a police regulation and changes the prior law so that intent to defraud or commit wrong is not an element of the offense of selling or exposing for sale less than the quantity represented, and the excluding of evidence tending to show absence of such intent is not error. *State v Peoples Ice*, 124 M 307, 144 NW 962.

**239.02 COMMISSIONER OF WEIGHTS AND MEASURES; DEPUTIES AND EMPLOYEES; COMPENSATION.**

**HISTORY.** 1887 c. 10 s. 19; G.S. 1878 Vol. 2 (1888 Supp.) c. 6 s. 77s; G.S. 1894 s. 397; R.L. 1905 s. 1959; 1911 c. 140 s. 3; 1911 c. 156 s. 2; G.S. 1913 ss. 4175, 4176; 1921 c. 382 s. 1; G.S. 1923 ss. 4634, 5271; M.S. 1927 ss. 4634, 5271.

The commission of administration and finance not having classified the employees of the railroad and warehouse commission nor fixed a scale of salaries for such employees, employees are entitled to the salaries fixed by the railroad and warehouse commission and there is no legal ground for disapproving the estimate for such salaries. Laws 1925, Chapter 426, changes or modifies prior statutes only to the extent necessary to conform them to that act. *State ex rel v Chase*, 165 M 268, 206 NW 396.

The fees and fines collected are money and property belonging to the state, and the legislature, as it sees fit, may appropriate such moneys in any manner it may determine so long as it keeps within the confines of the constitution, and this applies to Laws 1933, Chapter 161, a constitutional act. 1934 OAG 729, May 16, 1933 (371a-3).

**239.03 SALARIES.**

**HISTORY.** 1919 c. 454 s. 1; G.S. 1923 s. 5272; M.S. 1927 s. 5272.

**239.04 FEES TO BE PAID INTO STATE TREASURY.**

**HISTORY.** 1874 c. 76 s. 3; G.S. 1878 c. 21 s. 11; 1919 c. 454 s. 2; G.S. 1923 s. 5273; M.S. 1927 s. 5273.

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### 239.05 DEFINITIONS.

HISTORY. 1911 c. 156 s. 12; G.S. 1913 s. 4621; G.S. 1923 s. 5283; M.S. 1927 s. 5283; 1935 c. 216 s. 1; M. Supp. s. 5285-11.

Laws 1935, Chapter 216, empower the commission to appoint such weighers as may be necessary for weighing live stock and to collect the fees for same where the average daily number of live stock slaughtered or handled is 250 or more. 1938 OAG 385, Feb. 17, 1937 (371b-10).

A packing company buying live stock for slaughter direct from producers is a "buyer" provided the company is not engaged exclusively in the sale of meats at retail. OAG March 7, 1937 (371b-10).

Where a packer within the definition of the federal packers and stock yards act but not subject to the "stock yard" provision is subject to the state provisions relative to licensing of buyers. OAG March 7, 1937 (371b-10).

### 239.06 RULES AND REGULATIONS; POWER TO MAKE.

HISTORY. 1911 c. 156 s. 3; G.S. 1913 s. 4613; G.S. 1923 s. 5275; M.S. 1927 s. 5275.

### 239.07 DUTIES AND POWERS OF DEPARTMENT; STANDARD OF WEIGHTS AND MEASURES.

HISTORY. 1911 c. 156 s. 4; G.S. 1913 s. 4614; G.S. 1923 s. 5276; M.S. 1927 s. 5276.

NOTE. Sections 240.01 and 240.02, Revised Laws 1905, Sections 2722, 2723, are superseded by Section 239.07. The origin and legislative history of these sections are as follows

(240.01) HISTORY. 1849 c. 58; R.S. 1851 c. 32 s. 1; P.S. 1858 c. 27 s. 1; 1861 c. 39 ss. 1, 2; G.S. 1866 c. 21 ss. 1, 2; G.S. 1878 c. 21 ss. 1, 2; G.S. 1894 ss. 2195, 2196; R.L. 1905 s. 2722; G.S. 1913 s. 5788; G.S. 1923 s. 7019; M.S. 1927 s. 7019.

(240.02) HISTORY. 1849 c. 58; R.S. 1851 c. 32 s. 2; P.S. 1858 c. 27 s. 2; 1861 c. 39 ss. 3, 4; G.S. 1866 c. 21 ss. 3, 4; 1874 c. 76 s. 1; G.S. 1878 c. 21 ss. 3, 4; G.S. 1894 ss. 2197, 2198; R.L. 1905 s. 2723; G.S. 1913 s. 5789; G.S. 1923 s. 7020; M.S. 1927 s. 7020.

Under the powers granted to the council under the charter of Minneapolis, an ordinance was enacted requiring a fee of \$100.00 for each gasoline filling station and an additional \$5.00 for each station having more than two pumps. There are 700 filling stations in Minneapolis. Whether an ordinance requiring such a fee is a license enacted in the exercise of police power or a disguised tax should be left for decision upon the evidence, and the trial court is sustained in denying a temporary injunction against the enforcement of the ordinance. *Crescent Oil v City of Minneapolis*, 175 M 276, 221 NW 6.

### 239.08 INSPECTING, TESTING, SEALING; INCORRECT WEIGHTS, MEASURES.

HISTORY. 1911 c. 156 s. 5; G.S. 1913 s. 4615; G.S. 1923 s. 5277; M.S. 1927 s. 5277.

The statutes relating to weighing in case of conflict supersede any charter or ordinance provision on the same subject. OAG Dec. 27, 1935 (495).

### 239.09 POWERS AS SPECIAL POLICEMEN.

HISTORY. 1911 c. 156 s. 8; 1913 s. 4618; G.S. 1923 s. 5280; M.S. 1927 s. 5280.

### 239.10 NO FEE FOR ANNUAL INSPECTION OF WEIGHTS AND MEASURES.

HISTORY. 1911 c. 156 s. 11; G.S. 1913 s. 4620; 1915 c. 281 s. 1; G.S. 1923 s. 5282; M.S. 1927 s. 5282.

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This section does not apply to testing track scales used by a common carrier for weighing carload freight. OAG July 5, 1934 (371b-2).

## **239.11 LAWS UNREPEALED.**

HISTORY. 1911 c. 156 s. 13; G.S. 1913 s. 4622; G.S. 1923 s. 5284; M.S. 1927 s. 5284.

## **239.12 COMMISSION TO TEST METERS; PROCEDURE; FEES; CONDEMNATION; ENTRY.**

HISTORY. 1927 c. 291 s. 1; M.S. 1927 s. 5285-1; 1931 c. 98.  
Control of public utilities in Minnesota. 16 MLR 513.

## **239.13 COMMISSION TO APPOINT WEIGHERS AT PACKING PLANTS.**

HISTORY. 1935 c. 216 s. 2; M. Supp. s. 5285-12.

The commission has jurisdiction to weigh stock at the slaughterhouse even though purchased elsewhere in the state. OAG Feb. 17, 1937 (371b-10).

Live stock from outside the state may be weighed by Minnesota state weighers. OAG Sept. 11, 1944 (495).

Laws 1935, Chapter 216, deals with appointment and duties of weighers. 20 MLR 63.

## **239.14 COMMISSION TO FIX FEES.**

HISTORY. 1935 c. 216 s. 3; M. Supp. s. 5285-13.

The commission at locations like Austin, Albert Lea, and Lamberton where an average of 250 head or more of stock are slaughtered each day, may appoint weighers and assess the cost of weighing against the packing company. OAG Aug. 29, 1936 (371-10).

## **239.15 QUALIFICATIONS OF WEIGHERS.**

HISTORY. 1935 c. 216 s. 4; M. Supp. s. 5285-14.

## **239.16 BONDS.**

HISTORY. 1935 c. 216 s. 5; M. Supp. s. 5285-15.

Although the state is named as obligee, it must be understood to be so named for itself and those entitled by the statute to maintain an action on the required bond. Graybar v St. Paul Mercury, 208 M 478, 294 NW 654.

The bond of a live stock buyer definitely expires on June 30th of each year, and a new bond must be written annually. Buyers are not in the same category as weighers because the weighers are employees and their term of employment may be for an indefinite period, which period is covered by the statutory bond required. 1936 OAG 12, July 1, 1936 (371a-2).

## **239.17 RULES AND REGULATIONS; DOCKAGE; GRADES; INSPECTORS; SALARY.**

HISTORY. 1935 c. 216 s. 7; M. Supp. s. 5285-17.

Packers must pay the cost of printing the forms prescribed by the commission. OAG Aug. 29, 1936 (371b-10).

## **239.18 LIVE STOCK BUYERS MUST BE LICENSED.**

HISTORY. 1935 c. 216 s. 8; M. Supp. s. 5285-18.

The provisions of the act requiring licenses and bonds from wholesale dealers in farm products for the protection of their vendors and delegating to the commissioner of agriculture the authority to set the amount of the bond, but excluding

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farmers, is not unconstitutional as an arbitrary classification; does not place an unreasonable restraint upon the wholesale dealer; is a fair and not arbitrary classification of products and the exemption of farmers' cooperatives. *State v Marcus*, 210 M 576, 299 NW 241.

The penal sum of a bond is the surety's maximum liability. OAG July 21, 1936 (371a-2).

### 239.19 LIVE STOCK BUYERS SHALL KEEP RECORDS.

HISTORY. 1935 c. 216 s. 9; M. Supp. s. 5285-19.

### 239.20 SCALES TESTED.

HISTORY. 1935 c. 216 s. 10; M. Supp. 5285-20.

The expense of testing scales at union stock yards is not chargeable against the stock yards company. OAG Nov. 20, 1935 (371b-10).

### 239.21 LIVE STOCK FED BEFORE WEIGHING.

HISTORY. 1935 c. 216 s. 11; M. Supp. s. 5285-21.

### 239.22 BONDS FILED.

HISTORY. 1935 c. 216 s. 12; M. Supp. s. 5285-22.

### 239.225 OVERAGES, WEIGHING OF LIVE STOCK.

HISTORY. 1943 c. 123 s. 1.

### 239.23 OFFENSES; PENALTIES.

HISTORY. 1911 c. 156 s. 6; G.S. 1913 s. 4616; G.S. 1923 s. 5278; M.S. 1927 s. 5278.

Laws 1911, Chapter 156, is a police regulation and changes the prior law so that intent to defraud or commit wrong is an element of the offense of selling or exposing for sale less than the quantity represented, and the exclusion of evidence tending to show absence of such intent is not error. *State v People's Ice*, 124 M 307, 144 NW 962.

An offer to sell within the meaning of the statute is accomplished by attempt to sell as a ton of coal a quantity less than a ton; and intent to defraud is not a necessary element of the crime; deceit through carelessness being just as much prohibited as that due to clear intent. *State v Ahlgren*, 158 M 334, 197 NW 738.

### 239.24 HINDERING OFFICIAL A MISDEMEANOR.

HISTORY. 1911 c. 156 s. 7; G.S. 1913 s. 4617; G.S. 1923 s. 5279; M.S. 1927 s. 5279.

### 239.25 OBSTRUCTION OF INSPECTION; PENALTY.

HISTORY. 1927 c. 291 s. 2; M.S. 1927 s. 5285-2.

### 239.26 CERTAIN ACTS DEEMED GROSS MISDEMEANOR.

HISTORY. 1935 c. 216 s. 6; M. Supp. s. 5285-16.

### 239.27 VIOLATIONS; GROSS MISDEMEANOR.

HISTORY. 1935 c. 216 s. 13; M. Supp. s. 5285-23.

### 239.28 DRY MEASURES.

HISTORY. 1903 c. 268 s. 1; R.L. 1905 s. 2724; 1913 c. 560 s. 1; G.S. 1913 s. 5790; G.S. 1923 s. 7021; M.S. 1927 s. 7021.

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## 239.29 LIQUID MEASURE.

HISTORY. 1903 c. 368 s. 2; R.L. 1905 s. 2725; 1913 c. 560 s. 2; G.S. 1913 s. 5791; G.S. 1923 s. 7022; M.S. 1927 s. 7022.

## 239.30 LINEAL MEASURE.

HISTORY. 1903 c. 368 s. 3; R.L. 1905 s. 2726; 1913 c. 560 s. 3; G.S. 1913 s. 5792; G.S. 1923 s. 7023; M.S. 1927 s. 7023.

## 239.31 HUNDREDWEIGHT.

HISTORY. 1849 c. 58; R.S. 1851 c. 32 s. 10; P.S. 1858 c. 27 s. 10; 1861 c. 39 s. 9; G.S. 1866 c. 21 s. 9; G.S. 1878 c. 21 s. 8; G.S. 1894 s. 2202; R.L. 1905 s. 2727; 1913 c. 560 s. 3; G.S. 1913 s. 5793; G.S. 1923 s. 7024; M.S. 1927 s. 7024.

## 239.32 STANDARD WEIGHT OF BUSHEL.

HISTORY. 1849 c. 58; R.S. 1851 c. 32 s. 11; P.S. 1858 c. 27 s. 11; 1861 c. 39 s. 10; G.S. 1866 c. 21 s. 10; 1875 c. 87 s. 1; G.S. 1878 c. 21 ss. 9, 10; 1887 c. 22; 1893 c. 109; G.S. 1894 ss. 2203, 2204; 1897 c. 31; R.L. 1905 s. 2728; 1913 c. 560 s. 4; G.S. 1913 s. 5794; G.S. 1923 s. 7025; M.S. 1927 s. 7025.

## 239.33 STANDARD MEASUREMENT OF WOOD.

HISTORY. 1913 c. 560 s. 5; G.S. 1913 s. 5795; G.S. 1923 s. 7026; M.S. 1927 s. 7026. The Scribner rule is prescribed by statute but the Scribner Decimal C. log rule is more commonly used in practice and is the method followed by the surveyor general. 1934 OAG 164, Dec. 4, 1933 (429).

## 239.34 STANDARD WEIGHT OF COAL, CHARCOAL AND ICE.

HISTORY. 1913 c. 560 s. 6; G.S. 1913 s. 5796; G.S. 1923 s. 7027; M.S. 1927 s. 7027.

## 239.35 STANDARD WEIGHT OF FLOUR.

HISTORY. 1913 c. 560 s. 7; G.S. 1913 s. 5797; G.S. 1923 s. 7028; M.S. 1927 s. 7028.

## 239.36 FRACTIONAL PARTS.

HISTORY. 1913 c. 560 s. 8; G.S. 1913 s. 5798; G.S. 1923 s. 7029; M.S. 1927 s. 7029.

## 239.37 VARIATIONS; DUTY OF COMMISSION.

HISTORY. 1913 c. 560 s. 10; G.S. 1913 s. 5800; G.S. 1923 s. 7031; M.S. 1927 s. 7031.

Municipal charter or ordinance provisions must yield to statutory provisions on the same subject. OAG Dec. 27, 1935 (495).

## 239.38 SEALING.

HISTORY. 1849 c. 58; R.S. 1851 c. 32 s. 2; P.S. 1858 c. 27 s. 2; 1861 c. 39 s. 11; G.S. 1866 c. 21 s. 11; 1874 c. 76 s. 3; G.S. 1878 c. 21 s. 11; 1889 c. 80 s. 1; G.S. 1894 s. 2205; 1895 c. 43; R.L. 1905 s. 2729; G.S. 1913 s. 5801; G.S. 1923 s. 7032; M.S. 1927 s. 7032.

## 239.39 TESTING UPON REQUEST.

HISTORY. 1849 c. 58; R.S. 1851 c. 32 s. 6; P.S. 1858 c. 27 s. 6; 1861 c. 39 s. 11; G.S. 1866 c. 21 s. 11; 1874 c. 76 s. 3; G.S. 1878 c. 21 s. 11; 1889 c. 80 s. 1; G.S. 1894 s. 2205; R.L. 1905 s. 2730; G.S. 1913 s. 5802; G.S. 1923 s. 7033; M.S. 1927 s. 7033.

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### 239.40 NEGLECT TO PROCURE STANDARDS.

HISTORY. 1849 c. 58; R.S. 1851 c. 32 s. 8; P.S. 1858 c. 27 s. 8; 1861 c. 39 s. 8; G.S. 1866 c. 21 ss. 12, 13; G.S. 1878 c. 21 ss. 12, 13; G.S. 1894 ss. 2206, 2207; R.L. 1905 s. 2731; G.S. 1913 s. 5803; G.S. 1923 s. 7034; M.S. 1927 s. 7034.

### 239.41 WEIGHT OF BREAD; STANDARD AVOIRDUPOIS WEIGHT; TWIN OR MULTIPLE LOAVES.

HISTORY. 1927 c. 351 s. 1; M.S. 1927 s. 7035-1.

A mandatory act attempting to regulate the "sanitary wrapping of bread" is unconstitutional because in violation of Minnesota constitution art. 4 s. 27. *Egekvist v Benson*, 186 M 520, 243 NW 853.

Bread sold to CCC camps must be labeled in accordance with this section. 1934 OAG 1, Dec. 28, 1933 (135b-6).

### 239.42 BREAD TO BE WRAPPED.

HISTORY. 1927 c. 351 s. 2; M.S. 1927 s. 7035-2; 1931 c. 322 s. 1.

Distinguishing *Egekvist v Benson*, 186 M 520, 243 NW 853; *DeCoster v Commissioner*, 216 M 4, 11 NW(2d) 489.

See annotations under section 239.41.

### 239.43 NET WEIGHT CONSTRUED.

HISTORY. 1927 c. 351 s. 3; M.S. 1927 s. 7035-3; 1931 c. 322 s. 2.

### 239.44 PENALTY FOR VIOLATION.

HISTORY. 1913 c. 360 s. 9; G.S. 1913 s. 4799; G.S. 1923 s. 7030; M.S. 1927 s. 7030.

### 239.45 VIOLATIONS; PENALTY.

HISTORY. 1927 c. 351 s. 4; M.S. 1927 s. 7035-4.

### 239.46 FINES.

HISTORY. 1849 c. 58; R.S. 1851 c. 37 s. 8; P.S. 1858 c. 27 s. 8; 1861 c. 39 s. 8; G.S. 1866 c. 21 s. 11; 1874 c. 76 s. 3; G.S. 1878 c. 21 s. 11; 1889 c. 80 s. 1; G.S. 1894 s. 2205; R.L. 1905 s. 2732; G.S. 1913 s. 5804; G.S. 1923 s. 7035; M.S. 1927 s. 7035.

### 239.51 STANDARD WEIGHTS OF CERTAIN CONTAINERS.

HISTORY. 1945 c. 295.