

Article 3.

Violations.

§ 81A-22. Misrepresentation of quantity.

No person shall sell, offer or expose for sale less than the quantity he represents. No buyer shall take more than the quantity he represents when he furnishes the weight or measure by means of which the quantity of any commodity, thing or service is determined. (1927, c. 261, s. 19; 1945, c. 280, s. 1; 1949, c. 984; 1975, c. 544.)

§ 81A-23. Misrepresentation of pricing.

No person shall misrepresent the price of any commodity or service sold, offered, exposed, or advertised for sale by weight, measure, or count, nor represent the price in any manner calculated or tending to mislead or in any way deceive a person. (1975, c. 544.)

§ 81A-24. Commodities to be sold by weight, measure or numerical count.

It shall be unlawful to sell, except for immediate consumption by the purchaser, on the premises of the seller, liquid commodities in any other manner than by weight or liquid measure, or commodities not liquid in any other manner than by measure of time, by length, by volume, by weight or by numerical count. When a commodity is sold by numerical count in excess of one unit, the units which constitute said numerical count shall be uniform in size and/or weight, and be so exposed as to be readily observed by the purchaser. (1945, c. 280, s. 1; 1949, c. 973; 1975, c. 544.)

§ 81A-25. Unlawful for package to mislead purchaser.

It shall be unlawful to keep for the purpose of sale, offer or expose for sale, or sell, any commodity in package form when said package is so made, or formed, or filled, or wrapped, or exposed, or marked, or labeled as to mislead or deceive the purchaser as to the quantity of its contents. (1945, c. 280, s. 1; 1975, c. 544.)

§ 81A-26. Sale from bulk.

(a) Whenever the quantity is determined by the seller, bulk sales in excess of twenty dollars (\$20.00) and all bulk deliveries of heating fuel shall be accompanied by a delivery ticket containing the following information:

- (1) The name and address of the vendor and the name of the purchaser,
- (2) The date delivered,
- (3) The quantity delivered and the quantity upon which the price is based, if this differs from the delivered quantity,
- (4) The identity of the commodity in the most descriptive terms commercially practicable, including any quality representation made in connection with the sale,
- (5) The count of individually wrapped packages, if more than one, and
- (6) For heating fuels which are liquids and gases, the price per gallon and any other charges associated with the delivery. This subdivision applies only to residential, retail deliveries.

(b) Any invoice corresponding to the delivery ticket required under the preceding subsection (a) shall contain the information set forth in the preceding subdivisions (a)(1) through (6), and shall also state the amount of sales tax, if any, and the grand total. This subsection does not

apply to any subsequent billing when the seller has previously complied with the requirements of subsections (a) and (b) of this section.

(c) Whenever a seller quotes a price or other terms and conditions to a potential purchaser under this section, if those terms and conditions include a low, introductory price, other reduced charges, or other special conditions not representative of the prices or terms and conditions that apply to existing customers of the same type or class, the seller shall clearly and conspicuously disclose: (i) those facts, (ii) the price and terms and conditions that would on that date apply to existing customers of the same type or class as the potential purchaser, and (iii) the amount of time that the introductory or unrepresentative price or terms and conditions will remain in effect. (1975, c. 544; 1991, c. 642, s. 1; 1997-456, s. 11.)

§ 81A-27. Information required on packages.

Except as otherwise provided in this Chapter or by regulations promulgated pursuant thereto, any package kept for the purpose of sale or offered or exposed for sale shall bear on the outside of the package a definite, plain, and conspicuous declaration of:

- (1) The identity of the commodity in the package, unless the same can easily be identified through the wrapper or container,
- (2) The quantity of contents in terms of weight, measure, or count, and
- (3) The name and place of business of the manufacturer, packer, or distributor, in the case of any package kept, offered, or exposed for sale, or sold in any place other than on the premises where packed. (1927, c. 261, s. 16; 1945, c. 280, s. 1; 1975, c. 544.)

§ 81A-28. Declarations of unit price on random packages.

In addition to the declarations required by G.S. 81A-27, any package being one of a lot containing random weights of the same commodity and bearing the total selling price of the package shall bear on the outside of the package a plain and conspicuous declaration of the price per single unit of weight at the time it is offered for retail sale. (1975, c. 544.)

§ 81A-29. Offenses and penalties.

Any person who violates any provision of this section or any provision of this Chapter or regulations promulgated pursuant thereto for which a specific penalty has not been prescribed shall be guilty of a Class 2 misdemeanor upon a first conviction. Upon a subsequent conviction thereof, said person shall be guilty of a Class 1 misdemeanor. No person shall:

- (1) Use or have in possession for use in commerce any incorrect weight or measure.
- (2) Remove any tag, seal, or mark from any weight or measure without specific written authorization from the Commissioner or his authorized agent.
- (3) Hinder or obstruct any weights-and-measures official in the performance of his duties.
- (4) Impersonate in any way any employee of the North Carolina Department of Agriculture and Consumer Services designated by the Commissioner to enforce any part of this Chapter.
- (5) Use in retail trade, except in the preparation of packages put up in advance of sale, a weighing or measuring device which is not so positioned so that its indications may be accurately read and the weighing or measuring operation observed from some position which may be reasonably assumed by a customer.

- (6) Manufacture, use or possess a counterfeit seal, tag, mark, certificate, label or decal representing, imitating or copying the same issued by the Commissioner under this Chapter. (1927, c. 261, ss. 14, 15, 19; 1945, c. 280, s. 1; 1949, c. 984; 1975, c. 544; 1981, c. 607, s. 1; 1993, c. 539, s. 593; 1994, Ex. Sess., c. 24, s. 14(c); 1997-261, s. 8.)

§ 81A-30. Injunction.

The Commissioner or his authorized agent is authorized to apply to any court of competent jurisdiction for a temporary restraining order or a preliminary or permanent injunction restraining any person from violating any provision of this Chapter. (1975, c. 544.)

§ 81A-30.1. Civil penalties.

A civil penalty of not more than five thousand dollars (\$5,000) for each violation may be assessed by the Commissioner against any person who willfully violates this Chapter. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation. No civil penalty shall be assessed under this section unless the person has been given an opportunity for a hearing pursuant to the Administrative Procedure Act. If not paid within 30 days after the effective date of a final decision by the Commissioner, the penalty may be collected by any lawful manner for the collection of a debt.

The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1991, c. 642, s. 2; 1998-215, s. 4(a).)

§ 81A-31. Presumptive evidence.

Whenever there shall exist a weight or measure or weighing or measuring device in or about any place in which or from which buying or selling is commonly carried on, there shall be a rebuttable presumption that such weight or measure or weighing or measuring device is regularly used for the business purposes of that place. (1975, c. 544.)

§§ 81A-32 through 81A-36. Reserved for future codification purposes.