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THE TAITA TAVETA COUNTY WEIGHTS AND MEASURES
BILL, 2016

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THE TAITA TAVETA COUNTY WEIGHTS AND MEASURES BILL, 2016

A Bill for

AN ACT of the County Assembly of Taita Taveta to protect consumers of goods and services and ensure fair competition by traders by providing a legal framework for use of weights and measures in trade within the County; to standardize the unit of measurement, standardize the weights and measures used and for connected purposes.

ENACTED by the County Assembly of Taita Taveta, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Taita Taveta County Weights and Measures Act, 2016.

2. In this Act, unless the context otherwise requires—

“approved” means approved by the Director, or by any other person deputed by the Director to carry out examinations, grant approvals and issue certificates under this Act;

“base unit” means one of the international system (SI) units of measurement listed in the First Schedule;

“county” means the County Government of Taita Taveta;

“county assembly” means the County Assembly of Taita Taveta.

“check-weighed”, in relation to any vehicle, means weighed with its load by means of a suitable weighing instrument and weighed again after it has been unloaded by means of the same or another suitable weighing instrument;

“container” includes any form of packaging of goods for sale as a single item, whether by completely or partly enclosing the goods or by attaching the goods to, or winding the goods round some other article and includes a wrapper or confining band;

“custodian” means the custodian of Kenya Primary Standards referred to in section 13;
“director” means the County Director of Weights and Measures appointed under this Act;

“Governor” means the Governor of Taita Taveta County.

“inspector” means a person appointed as an inspector of weights and measures under this Act;

“mark” includes label;

“pre-packed” means packaged or made up in advance, ready for sale in or on a container;

“stamp” means a mark for use as evidence of the approval of weighing or measuring equipment as fit for use for trade, whether applied by impressing, casting, engraving, etching, branding, transfer or by any other means;

“trade” includes any transaction for the transferring or rendering of goods or services in consideration of money or money's worth;

“verification”, in relation to a weight, measure, weighing or measurement instrument, means the operations carried out by an inspector having the object of ascertaining and confirming that such weight, measure, weighing or measuring instrument entirely satisfies the requirements of this Act;

“weighing or measuring equipment” means equipment for measuring in terms of length, area, volume, capacity, weight or number, whether or not the equipment is constructed to give an indication of the measurement made or other information determined by reference to that measurement.

3. The object and purpose of this Act is to—

(a) provide a legal framework for use of weights and measures for purposes of trade within the county;

(b) to provide a uniform standard of weighing and measuring equipment and unit of measurement;

(c) to protect consumers of goods and services by guaranteeing them the right quantity of goods purchased.
(d) to ensure fair competition among traders by use of same standards of weighing and measuring equipment; and

(e) provide for the appointment and removal from office of the County Director of weights and measures; and

(f) provide for powers of entry, inspection and seizure of faulty weighing and measuring equipment.

PART II—UNITS OF MEASUREMENT

4. (1) In accordance with the Kenya Weights and Measures Act, the metre shall be the unit of measurement of length, the hectare shall be the unit of measurement of area, the Kilogram shall be the unit of measurement of mass, the cubic metre shall be the unit of measurement for Volume and the litre shall be the unit of measurement for capacity.

(2) The first schedule shall describe the permissible abbreviations of the units of measurement above and

(3) Any person who uses for trade any unit of measurement which is not authorized by this Act shall be guilty of an offence.

5. (1) The primary standards of measurement applied in the county shall be those procured by the Minister responsible for trade by reference to which standards, the accuracy of all other standards of those units and of any other unit of measurement shall be matched.

6. A weighing or measuring instrument shall be deemed to be for purposes of trade if—

(a) It is used to determine the weight, measurement or number of goods supplied, or acquired by way of trade on the basis of weight, measurement or number; or

(b) computing the payment for work or services rendered or for any tool or duty charged on the basis of weight, measurement or number; or

(c) determining weight or measurement upon payment of money; or grading agricultural produce by reference to weight or measure.
7. (1) A person shall—

(a) not use for trade any weight or measure which is not authorized by this Act; or

(b) not use for trade, or have in his possession or control for use for trade any weight or measure of a denomination other than those specified in Part I of the Third Schedule.

(c) for purposes of this Act, it shall be presumed that any weight, measure, weighing or measuring instrument found in the possession or control of any person carrying on trade or is found on any premises, whether in a building or not and whether open or enclosed, which are used for trade, belong to the person occupying those premises and the onus of proving the contrary shall be upon him.

(d) any person who contravenes the provisions of this section shall be guilty of an offence and any weight or measure used or in the possession of any person for use for trade in contravention of this Act shall be forfeited.

8. (1) Any person wishing to have weighing or measuring equipment passed as fit for use for trade shall submit the equipment to an inspector in such manner as the Bureau may direct and, subject to the provisions of this Act and of any regulations made thereunder and payment by that person of such fee as may be prescribed, the Inspector shall—

(a) test the equipment by means of such standards and testing equipment as determined by the Kenya Bureau of Standards or, subject to any conditions which may be prescribed, by means of other equipment which has already been tested and which the inspector considers suitable for the purpose; and

(b) if the equipment submitted falls within the prescribed limits of error and satisfies the requirements of this Act and of any regulations made thereunder, give to the person submitting it a statement in writing to the effect that it is passed as aforesaid; and
(c) keep a record of the test.

(2) Any person who forges, alters or defaces a statement in writing referred to in paragraph (b) of subsection (1) shall be guilty of an offence.

9. (1) The Department may from time to time, by notice published in the gazette and a daily newspaper with wide circulation in the county, appoint a day which shall be at least 14 days from the date of the notice, on which an inspector will visit any premises used for trade in a sub-county or ward, to inspect and test weighing and measuring equipment used for trade in that premise.

(2) On the day appointed under subsection (1) an inspector—

(a) shall visit the sub-county or ward specified in the notice referred to in that subsection, taking with him such working standards, testing and stamping equipment as he thinks necessary;

(b) may enter any premises in which he reasonably believes any weighing or measuring equipment is kept to be sold or used for trade;

(c) may request any person in the premises to produce for inspection and testing any weighing or measuring equipment in the custody of that person for sale or for use for trade; and

(d) may exercise any other power, and shall perform any other duty, conferred or imposed by section 17 on an inspector.

(3) Any person to whom a request is made pursuant to paragraph (c) of subsection (2) shall submit to the inspector, for inspection and testing, all weighing and measuring equipment in his custody.

(4) Where any weighing or measuring equipment is submitted to an inspector for testing, the inspector shall—

(a) test the equipment by means of such working standards and testing equipment as approved by the Kenya Bureau of Standards or, subject to any conditions which may be prescribed, by means of other equipment which has already been tested and which the inspector considers suitable for the purpose; and
(a) if the equipment submitted falls within the prescribed limits of error, give to the person submitting it a statement in writing to the effect that it is passed as fit to be used for trade; and

(b) except as otherwise expressly provided by or under this Act, cause the equipment to be stamped with the prescribed stamp; and (d) keep a record of the test.

(5) No weight or measure shall be—

(a) stamped as mentioned in paragraph (b) of subsection (4) unless it has been marked in the prescribed manner with its purported value;

(b) stamped or marked if it is too small to be stamped or marked.

(6) Any person who without reasonable cause fails to comply with any requirement properly made of him by an inspector under this section shall be guilty of an offence.

(7) In case of any measure, weighing or measuring instrument which is required by this Act to be verified only after it has been installed at the place where it is to be used for trade, if after the same has been so verified and stamped it is dismantled and re-installed, whether in the same place or some other place, it shall not be used for trade after being so re-installed until it has been verified and stamped by an inspector; and if any person knowingly uses, or causes or permits any other person to use any measure, weighing or measuring instrument in contravention of this subsection or, knowing that the same is required by virtue of this subsection to be so re-verified disposes of it to some other person without informing him of that requirement, he shall be guilty of an offence.

10. (1) Any person selling by weight or measurement any goods, other than pre-packed goods which satisfy the requirements of section 12, shall weigh or measure the goods in the presence of the buyer unless requested by the buyer to do so in his absence.

(2) Any person who contravenes subsection (1) shall be guilty of an offence

(3) Any person who, in selling or purporting to sell any goods by weight or other measurement or by number,
delivers or causes to be delivered to the buyer a lesser quantity than that purported to be supplied or than corresponds with the price charged shall be guilty of an offence.

**PART III—ADMINISTRATION**

11. (1) The department may appoint from among persons having such qualifications as may be prescribed, such number and categories of inspectors of weights and measures as the Department considers necessary for the efficient discharge of the functions conferred or imposed on inspectors by or under this Act.

(2) Every inspector so appointed shall be furnished with a certificate of appointment in the prescribed form.

(3) An Inspector may at any reasonable time enter any premises in which he reasonably believes any goods are bought or sold or any weighing or measuring equipment is kept to be used for trade and may, in those premises—

(a) inspect and test any weighing or measuring equipment therein;

(b) examine and test any pre-packed goods to ascertain whether they are of the right weight as indicated on the packaging;

(c) test any weighing or measuring equipment found in the premises to confirm whether it is of the correct measurement;

(d) make such other examination and enquiry as may be necessary to ascertain whether the provisions of this Act or any regulations made thereunder have been or are being complied with;

(e) seize, remove and detain any weighing or measuring equipment, or other thing which he has reasonable cause to believe is used by the owner of the premises contrary to provisions of this Act or any regulations made thereunder;

(f) An inspector exercising or attempting to exercise his power under this Act shall, if the person in charge of the premises requests of him, produce to that person his certificate of appointment or work identification card.
(4) Any person who—

(a) obstructs or hinders an inspector exercising his powers under this section; or

(b) fails to comply with any requirement properly made of him by an inspector under this section; or

(c) gives to that inspector information which he knows or ought to know to be false or misleading, shall be guilty of an offence.

(5) Nothing in this section shall be construed as requiring a person to answer any question or give any information if to do so might incriminate him.

(6) The inspector shall in the performance of his duties under this Act report to the County Director of Weights and Measures.

12. (1) An Inspector may, at the request of any person and subject to the payment by that person of such fee as may be prescribed, carry out a test of weighing and or measuring equipment and submit to that person a report on—

(a) a weighing or other measurement of any goods submitted for the purpose by that person at such place as the Department may direct;

(b) a test of the accuracy of any weighing or measuring equipment so submitted.

13. For effective discharge of his functions under this Act, an inspector shall have the following powers—

(a) he may stop and detain, or may arrest without warrant, any person suspected of an offence under this Act or being in possession of any goods, or any weight, measure or weighing or measuring instrument in respect of which he has reason to believe that such an offence has been committed and may search any person so stopped and detained or arrested;

(b) he may seize and detain any goods or thing, or any weight, measure or weighing or measuring instrument in respect of which he has reason to believe offend provisions of this Act or which he
has reason to believe to be evidence of such an offence.

14. It shall be an offence for any person to refuse or fails to produce to an inspector any weight, measure, weighing or measuring instrument in his possession or custody or control for use for trade, after an inspector has requested its production under this Act, or who obstructs or hinders or assaults an inspector during the performance of any duty or act imposed or authorized by this Act or who fails to comply with any reasonable request made by an inspector.

15. (1) Where any goods are required, when not prepacked, to be sold only by quantity expressed in a particular manner or only in a particular quantity, a person shall be guilty of an offence who—

(a) whether on his own behalf or on behalf of another person, offers or exposes for sale, sells or agrees to sell; or

(b) causes or suffers any other person to offer or expose for sale, sell or agree to sell on his behalf, those goods otherwise than by quantity expressed in that manner.

(2) A person shall be guilty of an offence who—

(a) whether on his own behalf or on behalf of another person, has in his possession for sale, sells or agrees to sell;

(b) except in the course of carriage of the goods for reward, has in his possession for delivery after sale; or

(c) causes or suffers any other person to have in his possession for sale or for delivery after sale, sell or agree to sell on behalf of the first-mentioned person, any goods to which subsection (3) applies, whether the sale is or is to be, by retail or otherwise.

(3) This subsection applies to any goods—

(a) which are required to be pre-packed only in particular quantities but are not so pre-packed;
(b) which are required to be otherwise made up in or on a container for sale or for delivery after sale only in particular quantities but are not so made up;

(c) which are required to be made for sale only in particular quantities but are not so made;

(d) which are required to be pre-packed only if the container is marked with particular information but are pre-packed otherwise than in or on a container so marked;

(2) In the case of any sale where the quantity of the goods sold expressed in a particular manner is required to be made known, to the buyer at or before a particular time and that quantity is not so made known, the person by whom, and any other person on whose behalf, the goods were sold shall be guilty of an offence.

16. (1) Any person guilty of an offence under this Act for which no specific penalty is prescribed, shall be liable to a fine not exceeding Kenya Shillings fifty thousand or to imprisonment for a term not exceeding three years or to both.

(2) Where any person has been convicted of an offence under this Act, the court convicting him may, in addition to any other penalty to which the convicted person may be liable, make such order as the Court thinks fit to prevent the person from continuing to deal with the same weights or measuring instruments or in the same goods or articles in respect of which the offence was committed.

17. (1) Any person who, in selling or purporting to sell any goods by weight or other measurement or by number, delivers or causes to be delivered to the buyer—

(a) a lesser quantity than that purported to be sold; or

(b) a lesser quantity than corresponds with the price charged, shall be guilty of an offence.

(2) Any person who—

(a) in connection with the sale or purchase of any goods; or

(b) in exposing or offering any goods for sale; or
(c) in purporting to make known to the buyer the quantity of any goods old; or

(d) in offering to purchase any goods, makes any misrepresentation, whether oral or otherwise as to the quantity of the goods, or does any other act calculated to mislead a person buying or selling the goods as to the quantity of the goods, shall be guilty of an offence.

(3) The goods in subsections (1) and (2) above shall be confiscated and destroyed after conclusion of the matter.

(4) In any proceedings under this Act, the description of any goods in any package shall be prima facie evidence that the goods were at the time of the offence and subsequently as so described, and the burden of proving the contrary shall lie upon the accused person.

18. (1) This subsection applies to any proceedings for an offence under this Act, by reason of quantity—

(a) of any goods made up for sale or for delivery after sale (whether by way of pre-packing or otherwise) in or on a container marked with an indication of quantity;

(b) of any goods which, in connection with their sale or an agreement for their sale, have associated with them a document purporting to state the quantity of the goods; or

(c) of any goods required under this Act to be pre-packed, or to be otherwise made up in or on a container for sale or for delivery after sale, or to be made for sale, only in particular quantities;

(d) being less than that marked on the container or stated in the document in question or being less than the relevant particular quantity, as the case may be.

(2) In any proceedings to which subsection (1) applies, it shall be a defense for the person charged to prove that the deficiency arose—

(a) in a case falling within paragraph (a) of subsection (1), after the making up of the goods and the marking of the container;
(b) in a case falling within paragraph (b) of that subsection, after the preparation of the goods for delivery in pursuance of the sale or agreement and after the completion of the document;

(c) in a case falling within paragraph (c) of that subsection, after pre-packing the goods or making the goods up or marking, as the case may be, of the goods for sale;

and was attributable wholly to factors for which reasonable allowance was made in stating the quantity of the goods in the marking of the document or in making up or marking the goods for sale, as the case may be.

19. (1) There shall be a County Director of Weights and Measures who shall be competitively recruited by the County Public Service Board, and shall be domiciled in the department responsible for Weights and measures.

(2) The Director will be charged with the following responsibilities among others—

(a) giving effect to provisions of this Act;

(b) liaise with the National Government Department or Agency responsible for weights and measures to obtain the approved standards and units of measurements to share the same with the Inspectors appointed under this Act.

(c) supervision of inspectors in charge of any sub-county or ward;

(3) Without prejudice to the powers and duties of an inspector under any other provisions of this Act, the Director may make arrangements whereby an inspector may, at the request of any person and upon payment of the prescribed fee, carry out and submit to that person a report on—

(a) weighing or measurement of any goods or article submitted for the purpose by that person;

(b) a test of the accuracy of any weight, measure or weighing or measuring instrument so submitted.

(4) The director may on his own motion or upon receipt of a complaint by a citizen, direct an inspector to
conduct random checks of weights and measures in any part of the county to ensure compliance with this Act.

PART IV—ADMINISTRATION

20. The member of the county executive committee for the time being responsible for trade may in consultations with the Director make regulations for the better carrying into effect the provisions of this Act.
The principal object of this Bill is to provide a legal framework for use of weights and measures in trade within the county.

The Bill among other objects seeks to protect consumers of goods and services by ensuring that they get value for money by obtaining right quantities of goods that they pay for.

The Bill also ensures fair competition by traders by standardizing the unit of measurement to be used in trade and standardizing the weights and measures used and the weighing and measuring equipment used in trade.

The Bill further provides for appointment of an Inspector of Weights and Measures and a Director of Weights and Measures responsible for giving effect to provisions of this Act.

The enactment of this Bill shall occasion additional expenditure of public funds to be provided for in the estimates.

FRANCIS R. TERERE,
Member of County Assembly.