

Memorandum

To: Commission
From: Staff
Date: September 1, 2003
Re: Title 51

Title 51 of the New Jersey Statutes comprises 13 chapters of law regulating the sale, transportation and licensing of various commodities. Administrative regulations further delineate the statutory provisions, *N.J.A.C. 13:47C-1.1 et seq.*, and state, country and municipal authorities enforce the system of control in the trade of commodities. The administrative apparatus of enforcement is decentralized and split among various authorities. The mosaic of law and regulations governing weights and measures developed gradually over more than one century, undergoing periodic, though sporadic, amendment. The central aim of Title 51 is consumer protection.

Chapter 1 applies to weights, measures and counts of certain commodities and tracks the federal Fair Packaging and Labeling Act. 15 U.S.C.A. §1451 *et seq.* “The obvious purpose of the legislation, insofar as it prescribes labeling requirements, is to assure that when consumers buy certain quantifiable commodities, whether quantified by weight, measure or count, a reliable representation must be made to them of the precise quantity they are buying.” *State of New Jersey v. CompUSA*, 288 N.J. Super. 413 (App. Div. 1996)(holding that computer accessories are not “commodities” within Title 51). Chapter 1, containing 133 sections, is the longest chapter in Title 51 and arguably its most important chapter. The Legislature last revised Chapter 1 in 1986.

For purposes of revision, Title 51 poses several challenges and questions: (1) to what extent does federal law, or indirectly U.S. Treaty obligations under the World Trade Organization, preempt New Jersey state law, (2) which provisions of the statute are still valid in terms of commercial use and enforcement practices, and (3) whether it is possible or desirable to reform the decentralized system of enforcement and rule making. The recommended approach is to isolate non-controversial and potentially dead provisions within Title 51 for repeal. Subsequently, Title 51 and its administrative regulations can be analyzed within the larger framework of federal and other state law to determine their legality and continued utility. The project requires the cooperation and approval of several agencies, for example, the Attorney General, the Department of Environmental Protection and County superintendents, to name a few.

The names of the 13 chapters are: (1) Weights, Measures and Containers, (2) Money Account (repealed), (3) Standard Meridian Line; Land Descriptions, (4) Standards for Commercial Products, (5) Gold, Silver and Alloys Thereof, (6) Platinum and Alloys Thereof, (7) Anthracite, (8) Solid Fuel, (9) Liquid Fuel, (10) Liquefied Gases, (11) Soil Amendments, (12) Safety Glazing Material and (13) Lighters. Some Chapters may be unsuitable for revision due to their recent enactment. For example, Chapter 13 entitled “Lighters” was enacted in 1991 and it expressly requires manufacturers of lighters to

make them “child resistant.” The Legislature is unlikely to revisit this area. However, other chapters derive from earlier times and may be ripe for repeal: Chapter 7 on Anthracite and Chapter 3 on the Meridian Line. Chapter 7 in its entirety is recommended for repeal. Chapter 3 is partially recommended for repeal to the extent it requires antiquated methods of measurement.

Chapter 7. Anthracite

N.J.S.A. 51:7-2 provides in pertinent part:

“It shall be unlawful for any person to transport over the highways of this State any anthracite brought into this State by motor vehicle from outside of this State unless such anthracite when it crosses any boundary line of this State and at all times thereafter during the transportation thereof over the highways of this State is accompanied by an original certificate of origin signed by the person who is the owner or operator of the breaker, colliery, yard or other place of production or storage, or his duly authorized agent, where the anthracite to which the certificate of origin refers was produced or stored and also signed by the person driving or operating the motor vehicle on which said anthracite is transported into this State.”

The purpose of the statute was to prevent the entry into N.J. of stolen coal from Pennsylvania and its transportation within the state. In 1940, the Federal District Court in *Dickerson v. N.J. Dept. of Weight and Measures*, 33 F. Supp. 431 (D.N.J. 1940), *rev'd on other grounds*, 312 U.S. 656 (1941) ruled that the State of New Jersey lacked the authority to regulate the cross-border shipment of coal, and that the law infringed Congress's power to govern interstate commerce. In spite of this ruling, the statute has remained on the books and the procedure for recovering a penalty under the statute amended as recently as 1991. As Chapter 7 deals entirely with the requirement of obtaining certificates of origin and prevention against the transportation and sale of stolen coal, the Chapter in its entirety is recommended for repeal.¹ In addition, the threat that this problem posed in 1937, when the statute was enacted, is dissimilar to the threat it poses today when anthracite mining and production in Pennsylvania has diminished and is highly regulated under environmental law.

[51:7-1. Definitions

For the purpose of this chapter the following words shall be deemed to have the meaning herein given:

- a. "Department" shall mean state department of weights and measures.

¹ The Criminal Code handles issues of the sale of stolen property.

b. "Person" shall be construed to include any individual, partnership, unincorporated association, corporation or other form of business enterprise.

c. "Weights and measures officers" shall be construed to include the state superintendent of weights and measures or his assistants or inspectors, county or assistant county superintendents of weights and measures or inspectors, and municipal or assistant municipal superintendents of weights and measures or inspectors.

51:7-2. Transporting anthracite into state over highways by motor vehicle; certificate of origin required; signatures

It shall be unlawful for any person to transport over the highways of this State any anthracite brought into this State by motor vehicle from outside of this State unless such anthracite when it crosses any boundary line of this State and at all times thereafter during the transportation thereof over the highways of this State is accompanied by an original certificate of origin signed by the person who is the owner or operator of the breaker, colliery, yard or other place of production or storage, or his duly authorized agent, where the anthracite to which the certificate of origin refers was produced or stored and also signed by the person driving or operating the motor vehicle on which said anthracite is transported into this State.

Amended by L.1938, c. 242, p. 547, s. 1.

51:7-3. Contents of certificate of origin

The certificate of origin shall contain the following:

a. The name or names and location of, and the name or names of the owners or operators of, the breaker, colliery, yard or other place of production or storage where the anthracite to which the certificate refers has been produced or stored.

b. The kind, size and weight of the anthracite.

c. The name and address of person claiming ownership of said anthracite.

d. The name and address of the driver of the motor vehicle transporting said anthracite and the State motor vehicle registration number of said vehicle.

e. The name and address of the person or persons to whom said anthracite is to be delivered.

f. The date said certificate is issued.

Amended by L.1952, c. 146, p. 503, s. 1.

51:7-7. Issuance of certificates; nontransferable; false certificate

The certificates of origin as herein provided shall be issued only on forms to be supplied, on application therefor, by the superintendent of the department, shall be serially numbered and issued consecutively. A nominal charge to cover the cost of supplying such forms may be made by the superintendent. Said certificates of origin shall be nontransferable and any person who has in his possession or who files with a weighmaster or forwards to the superintendent a false certificate of origin shall be deemed guilty of a violation of this chapter.

The superintendent of the department shall issue such blank certificates of origin to any person who is the owner or operator of a colliery, breaker or other place of production or who is the owner or operator of a yard, pocket or other place of storage, outside the State of New Jersey, upon application therefor by such person showing the necessity for the issuance of said certificates and upon proof satisfactory to the superintendent that all anthracite produced or stored is not stolen and is legally acquired at its source. Notification shall promptly be given to the superintendent in case of change of source or the obtaining of anthracite from new sources since the time said application is made, and satisfactory proof shall be furnished that the anthracite is legally acquired at the new sources.

Whenever any person who transports or intends to transport anthracite into this State furnishes proof satisfactory to the superintendent that all anthracite so transported or to be transported is legally acquired at its source and is not stolen, and further, that such person is unable to obtain certificates of origin at the breaker, colliery or other place of production or at the yard, pocket or other place of storage, blank certificates shall be issued to such person in such number as the business of such person requires.

Amended by L.1938, c. 242, p. 547, s. 2.

51:7-5. Duplicate certificate filed with weighmaster

Any person bringing anthracite into this State from outside of this State and said anthracite is to be sold or delivered within the boundaries of this State shall file a duplicate of the required certificate of origin with the weighmaster in charge of the scales where said person has said anthracite weighed in accordance with the requirements of the laws of this State, and such duplicates of said certificates of origin shall be retained at such scales for a period of one year, unless the superintendent directs the forwarding of the same to his office, and shall be subject and open to inspection by any weights and measures officer; after storage or sale of said anthracite in this State the original certificates of origin shall be forwarded to the superintendent at his office within ten days from the date of such sale or storage and the triplicate copy shall be kept by the person who sells or stores said anthracite.

Amended by L.1938, c. 242, p. 548, s. 3.

51:7-6. Revoking license to sell solid fuel; voiding certificate of origin

The superintendent of the department shall revoke the license of any person licensed to sell solid fuel in this State who buys, sells or transports stolen anthracite within this State or who buys, sells or transports anthracite which has been acquired at a place of production, storage or source where stolen anthracite is handled or distributed, and shall issue to such person no further license to sell solid fuel in this State for a period of at least one year from the date of revocation. The superintendent shall give at least five days' notice of the proposed revocation proceedings, which notice shall contain the charges made against the licensee and the time and place of the hearing of said revocation proceedings; said notice shall be sent by registered mail to the address given by the licensee in his application for license to sell solid fuel; said licensee shall have the opportunity to appear and enter a defense at the hearing to be held at the office of the superintendent.

The superintendent shall void all certificates of origin where the person who obtains the same buys, sells or transports stolen anthracite or deals in or handles stolen anthracite. The superintendent may refuse to grant and may void certificates of origin where the person who applies for or obtains the same violates any of the provisions of this chapter or for any of the following reasons: Fraud or misrepresentation practices in procuring any such certificates; dishonesty in conducting his business; conduct of a character likely to defraud or deceive the public; transferring said certificates to a person other than the person to whom they were issued or for any conduct or practice at variance with the purpose of this chapter. Any person using voided certificates knowingly shall be deemed guilty of a violation of this chapter. Five days' notice by registered mail of the proposed refusal to grant or voiding of said certificates shall be given to the person who applied for or obtained the same and upon request of said person he shall be given an opportunity to show cause why the granting of said certificates should not be refused or said certificates voided.

Amended by L.1938, c. 242, p. 549, s. 4; L.1952, c.

51:7-7. Enforcement of Chapter

All weights and measures officers in this State, in addition to their various duties now provided for by law, are hereby charged with the duty of enforcing and executing the provisions of this chapter, and the superintendent of the department shall make such rules and regulations as he may deem necessary for its enforcement.

Amended by L.1938, c. 242, p. 550, s. 5.

51:7-8. Penalty for violations

Any person who violates any of the provisions of this chapter shall upon being found guilty of such offense pay a fine of not less than \$250.00 nor more than \$1,000.00 or if unable to pay such fine shall be committed to a county jail for a period not to exceed 90

days.

Amended by L.1969, c. 251, s. 31, eff. Jan. 1, 1970.

51:7-9. Procedure for recovery of penalties; jurisdiction

Any penalty incurred under the provisions of this chapter shall be sued for in the name of the State of New Jersey by any weights and measures officer. Jurisdiction of all cases arising out of violations of the provisions of this chapter is hereby conferred upon the Superior Court and the municipal courts in the county in which such violations are committed.

Amended 1938,c.242,s.6; 1953,c.48,s.16; 1991,c.91,s.483.]

Chapter 3. Standard Meridian Line

Likewise appropriate for repeal is most of Chapter 3 entitled “Standard Meridian Line.” *N.J.S.A. 51:3-1* provides:

The board of chosen freeholders of each county shall erect, and properly inclose and protect at public spots, adjacent to the courthouse of the county, two substantial pillars on the same meridian line and not less than one hundred feet apart. The board shall cause to be determined the accurate latitude and longitude of the first of said pillars, reckoning the longitude from the meridian at Washington, and shall have said latitude and longitude distinctly and legibly marked on said pillar in degrees, minutes, seconds and parts of a second. Upon the summit of the first pillar there shall be immovably placed a brass plate, indented with a line indicating the true meridian. There shall also be placed on said first pillar a hair sight, in such a manner that a straight line passing through the center thereof, extended to a distinctly visible needle point, which shall be maintained on the summit of the second pillar, will be in the line of true meridian running north and south. The board shall cause the said meridian line to be verified at any time, when required by order of any judge of the Superior Court.

The statute enacted in 1877 is intended to measure true north. True north, the geographic position of the North Pole, differs from magnetic north, the magnet created by the earth's

iron core.² The legal significance of true north is to make accurate descriptions of properties in deeds and other documents. Magnetic north drifts. However, the statutory remedy does not reflect actual practice. An informal survey indicates that many counties have not erected pillars adjacent to the courthouse and surveyors do not rely upon pillars to make their measurements. Rather, surveyors rely upon measurements of latitude and longitude based on grid maps established by federal agencies. Article 2 of Chapter 3 has codified this practice for purposes of land descriptions and official surveys. *N.J.S.A.* 51:3-7. Consequently, it is recommended that article 1 of Chapter 3 be recommended for repeal.

[51:3-1. Pillars showing true meridian; verification of meridian line

The board of chosen freeholders of each county shall erect, and properly inclose and protect at public spots, adjacent to the courthouse of the county, two substantial pillars on the same meridian line and not less than one hundred feet apart. The board shall cause to be determined the accurate latitude and longitude of the first of said pillars, reckoning the longitude from the meridian at Washington, and shall have said latitude and longitude distinctly and legibly marked on said pillar in degrees, minutes, seconds and parts of a second. Upon the summit of the first pillar there shall be immovably placed a brass plate, indented with a line indicating the true meridian. There shall also be placed on said first pillar a hair sight, in such a manner that a straight line passing through the center thereof, extended to a distinctly visible needle point, which shall be maintained on the summit of the second pillar, will be in the line of the true meridian running north and south. The board shall cause the said meridian line to be verified at any time, when required by order of any judge of the Superior Court.

Amended 1953,c.48,s.14; 1991,c.91,s.479.

51:3-2. Custody of pillars and inclosure; free access thereto

The said pillars and inclosure shall be subject to the custody of the county clerk. Any surveyor of lands, or civil engineer, residing in said county, or engaged in surveying therein, shall have free access thereto for the purpose of testing the variation of the compass.

51:3-3. Injuring pillars; misdemeanor

Any person who shall willfully erase, alter, deface, displace, destroy, carry away or otherwise injure any such pillar or inclosure, or any part thereof, shall be guilty of a misdemeanor. Upon conviction thereof, he shall for each offense be punished by a fine of not less than fifty dollars nor more than five hundred dollars, or by imprisonment in the state prison for not less than one nor more than three years, or both, at the discretion of the court.

² Geographic north is where the earth's axis cuts the globe in two. This axis of rotation is tilted to the plane of the elliptic path of the earth around the sun. There also is a third north, the grid north, that is a line running parallel to the meridian of true north, that is a line of longitude converging on the North Pole.

51:3-4. Variation of compass; testing; certificate; filing; fees

Every surveyor engaged in surveying land within this state, shall test and note the actual variation of his compass from the true meridian line at least once in each year. He shall deposit a copy of his notes with the date and time of such test and a certificate embodying the variation with an affidavit verifying its correctness with the clerk of the county, in which he resides or has his office, to be recorded in a book provided for that purpose.

For recording each certificate and affidavit, for copies or abstracts thereof, and for drawing the certificate and seal therefor, said clerk shall be allowed the legal fees allowed for similar services. The said fees shall be paid by the person who desires the service performed.

51:3-5. Penalty for violation; recovery

Every surveyor, who shall neglect or refuse to comply with the provisions of section 51:3-4 of this title, shall for each offense, be liable to a penalty of fifty dollars to be recovered with costs, by the board of chosen freeholders or by any person for its use and benefit in an action at law.

51:3-6. Salem and Cumberland counties

L.1869, c. 228, p. 566, entitled "Supplement to the act to establish a meridian line standard in the several counties of this state," approved March twenty-fourth, one thousand eight hundred and sixty-nine, saved from repeal. [This act requires surveyors in Salem and Cumberland counties twice each year to test compasses and note variations and to file verified certificates in a prescribed form, and thereafter to make and return surveys according to the true bearings instead of the magnetic bearings, and fixes the fees of the county clerk as follows: 25 cents for recording each certificate and affidavit appended, and 15 cents for taking the affidavit.]