

# Legislative Analysis



## WEIGHTS & MEASURES PENALTIES AND MOTOR FUEL QUALITY PENALTIES

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**House Bills 4501 and 4502 as introduced**

**Sponsor: Rep. Fran Amos**

**Committee: Agriculture**

**First Analysis (9-19-05)**

**BRIEF SUMMARY:** The bills would increase penalties for multiple violations of the Motor Fuels Quality Act and the Weights and Measures Act.

**FISCAL IMPACT:** If the number of fines assessed by the Department of Agriculture under the MFQA and the W&M Act remained constant, increasing the penalties under those acts would increase fine revenue – either state-restricted Gasoline Inspection and Testing Fund revenue, under the MFQA, or state General Fund restricted purpose revenue, under the W&M Act. The bill would have no impact on local costs or revenues.

### **THE APPARENT PROBLEM:**

Together, the Weights and Measures Act and the Motor Fuels Quality Act ensure that gasoline sold in the state is of the quality and quantity advertised and meet the required specifications. Uniform standards for weights and measures under the Weights and Measures Act govern the specifications of gasoline pumps, among other products used in everyday commerce. In addition, the Motor Fuels Quality Act establishes standards for the quality and purity of gasoline sold or offered for sale in the states. (It does not, however, establish similar standards for diesel fuel.)

The two acts are necessary to protect consumers from unscrupulous businesses seeking to take advantage of them. With gas prices well above \$2.50 a gallon, many believe that steps should be taken to crack down on gas station owners and others within the industry that cheat consumers through poor fuel quality and incorrect amounts of fuel. Legislation to increase the penalties on individuals who violate the Weights and Measures Act and the Motor Fuels Quality Act on multiple occasions has been introduced.

### **THE CONTENT OF THE BILLS:**

#### **House Bill 4501 (Motor Fuels Quality Act)**

Under the Motor Fuels Quality Act (Public Act 44 of 1984), any person who violates the act or any rule promulgated under the act is subject to an administrative fine levied by the Department of Agriculture, in addition to actual investigation costs and twice the economic benefit associated with the violation. For a first violation, the fine is between \$100 and \$500. For a second violation occurring within five years after the first violation, the administrative fine is between \$500 and \$1,000. For a third violation

occurring within five years after the first violation, the fine is between \$1,000 and \$2,000. **The bill would double the range of the administrative fine for the second and third violations.**

In addition, the act provides that a person who does any of the following is guilty of a misdemeanor punishable by no more than 90 days imprisonment and/or a fine between \$1,000 and \$2,000: (1) harms part of a stage 1 or 2 vapor-recovery system; (2) makes a false representation; (3) fails to disclose information relating to the harm of a stage 1 or 2 vapor-recovery system; (4) falsifies records; (5) removes a seal placed on a dispenser; or (6) violates the act or rules for which a penalty is not otherwise specified. If a person commits an above violation within two years of a prior violation that results in a conviction, or impersonates the director or an inspector of the Department of Agriculture, the person is guilty of a misdemeanor punishable by 90 days imprisonment and/or a fine between \$2,000 and \$10,000. **The bill would increase the allowable fine levied against a person who commits the subsequent violation, or who impersonates the director or inspector, to between \$5,000 and \$15,000.**

MCL 290.644 et al.

#### **House Bill 4502 (Weights and Measures Act)**

Under the Weights and Measures Act (Public Act 283 of 1964), the director of the Department of Agriculture may enter into a consent agreement with a person who has violated the act or associated rules to assess a civil fine and the costs of the economic benefit associated with the violation. For a first violation, the fine is between \$50 and \$1,000. For a second violation within two years of the first violation, the fine is between \$100 and \$5,000, in addition to actual investigation costs. Finally, for a third violation within two years of the first violation, the fine is between \$500 and \$10,000, in addition to actual investigation costs.

**The bill would increase the fines for second and third violations to between \$1,000 and \$7,500 for a second violation, and between \$2,000 and \$10,000 for a third violation.**

MCL 290.631a

#### ***BACKGROUND INFORMATION:***

##### **Motor Fuels Quality Act**

The current penalties to be increased in House Bill 4501 were last increased with the enactment of Public Act 13 of 2002 (House Bill 5005). Prior to Public Act 13, a first violation of the act or rules was punishable by an administrative fine between \$50 and \$100. A second violation or third violation occurring within two years after the first violation was punishable by an administrative fine between \$100 and \$250 and between \$250 and \$500, respectively. In addition to the administrative fine, violators were also

liable for the actual investigative costs and the amount of any economic benefit received. (Public Act 13 increased this to double the economic benefit.) Multiple violations of the activities listed in Section 10b (MCL 290.650b) – listed above – were initially punishable by imprisonment of 90 days and/or an administrative fine between \$2,000 and \$5,000. Public Act 13 increased the maximum fine to \$10,000. All of these penalties were first added to the Motor Fuels Quality Act with the enactment of Public Act 236 of 1993. The act also imposes a civil fine of \$1,000 for each day of noncompliance for failing to post a notice of the fuel grade and additives at the fuel pump, and a civil of up to \$10,000 for each day of noncompliance for the manufacture or sale of gasoline not meeting the purity and quality standards established by the Department of Agriculture. Neither of these penalties would be impacted by House Bill 4501.

According to the Department of Agriculture, in FY 2004, the department's laboratory division responded to 1,043 consumer complaints about substandard gasoline and/or incorrect amounts. The department issued 70 stop sale orders for substandard quality, issued more than 585 warning letters and 320 administrative fines, 70 of which were for substandard fuel. (FY 2004 was the last year of a three-year licensing compliance effort of the department. Retail stations not in compliance with the license requirements were fined, which resulted in a large increase in the number of fines compared to previous years. In FY 2002 and FY 2003, the department issued 72 and 75 administrative fines, respectively, for substandard fuel quality.)

### **Weights and Measures**

The consent agreement provision in the Weights and Measures Act was recently added to the act with the enactment of Public Act 208 of 2002, which updated state standards to coincide with current national weights and measures standards and also allowed for the voluntary registration of service persons and agencies. Under the act, violations, depending on the severity, are either misdemeanors or felonies, which are adjudicated through the court system. The consent agreement is an administrative alternative to criminal charges with the aim of better ensuring compliance with the act.

According to the Department of Agriculture, in FY 2004, the department's laboratory division conducted 9,400 weights and measures device inspections at 2,400 establishments in the state. The department also investigated more than 1,000 allegations of short weights, short measure, and item pricing violations. In all, the department issued 36 warning letters and 50 consent agreements for weights and measure violations, assessing \$311,850 in fines and penalties. In FY 2003, the department issued 199 warning letters, and 26 consent agreements, assessing \$123,985 in fines and penalties.

### **Department of Agriculture**

Individuals believing that they have purchased adulterated fuel or an incorrect amount of fuel may call the Department of Agriculture at 1-800-MDA-FUEL. This number is also required to be posted on every gasoline pump.

In addition, the state maintains a website at <http://www.michigan.gov/gasprices>. The website permits individuals to check average gas prices and look-up gas stations across the state, file a complaint in the case of gas gouging, learn consumer tips for buying gasoline, learn driving techniques to improve fuel economy, find alternatives to driving, and discover in-state travel destinations. Similar information is also available on the Department of Agriculture's website at <http://www.michigan.gov/mda>.

### ***FISCAL INFORMATION:***

Section 8 of the Motor Fuels Quality Act establishes the Gasoline Inspection and Testing Fund to be used exclusively for the purpose of funding the gasoline inspection and testing program and the vapor-recovery program established by the act. Section 4 of the act directs the civil and administrative fines ordered pursuant to the act for deposit in the Gasoline Inspection and Testing Fund. The amount of fine revenue collected by the Michigan Department of Agriculture has fluctuated over the last eight years, from a low of \$13,498 in FY 1996-97, to a high of \$313,778 in FY 2001-02. The department collected \$116,568 in the most recently completed fiscal year, FY 2003-04. Some of the reasons for the year-to-year variance are described in the Background Information section above.

Section 31a of the Weights and Measures Act directs that any civil fines or costs recovered under the act be paid to the state General Fund "and credited to the department for enforcement of this act." In FY 2002-03, the department assessed \$123,985 in fines and penalties. In FY 2003-04, the department assessed \$311,850 in fines and penalties.

### ***ARGUMENTS:***

#### ***For:***

The bill seeks to protect consumers from businesses that repeatedly violate state motor fuel quality and measurements standards, as poor quality fuel can cause engine wear and significant damage. Moreover, the bill protects gas station owners by ensuring a level playing field. With high gas prices, there is a great incentive for some unscrupulous gas station owners to cheat consumers through substandard fuels and incorrect amounts. Cheating business can gain an unfair market advantage over their competitors, putting compliant stations out of business.

#### ***Against:***

Most profits on the sale of gasoline are not earned by service station dealers and retailers, but by the oil companies themselves. The increased penalties unfairly target small businesses, not the larger companies with greater control over the costs of motor fuel and greater ability to absorb the increased penalties should a violation occur. In addition, many of the fines were set only a few years ago.

#### ***Response:***

The bills increase penalties for multiple violations of the two acts. This does not affect the small businesses that may unwittingly violate the law. Rather, the bill targets those businesses that willfully and repeatedly violate the state's consumer protection laws.

Moreover, HB 4502 would apply to other sales, not just gasoline. It hasn't been shown that there is a problem with other sales by weight or measurement, such as the use of grocery scales and scanners.

***Rebuttal:***

The bill should distinguish between willful violations and unintentional violations. Many statutes already make this distinction.

***Against:***

Many within the industry believe that a more effective approach to this problem would be to require gas stations to have their pumps recalibrated and checked on an annual basis as part of their licensing requirements. Annual calibration would ensure that pumps distribute the correct amounts. Increased enforcement by the Department of Agriculture would ensure compliance with motor fuel quality standards, as well as measurement standards.

***POSITIONS:***

The Department of Agriculture supports the concept of the bills. (9-19-05)

The Associated Petroleum Industries of Michigan opposes the bills. (8-24-05)

The Service Station Dealers Association of Michigan opposes the bills. (8-24-05)

The Michigan Petroleum Association of Michigan opposes the bills. (8-24-05)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.