

**SUBSTITUTE FOR
HOUSE BILL NO. 4502**

A bill to amend 1964 PA 283, entitled
"Weights and measures act,"
by amending section 31 (MCL 290.631), as amended by 2002 PA 208.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 31. (1) A person who, by himself or herself or by the
2 person's servant or agent, or as the servant or agent of another
3 person, engages in any of the following acts is guilty of a
4 misdemeanor and may be fined not less than \$1,000.00 or not more
5 than \$10,000.00, or imprisoned for not more than 1 year, or both:
6 (a) Use or have in possession for the purpose of using for any
7 commercial purpose specified in section 10, sell, offer, expose for
8 sale or hire, or have in possession for the purpose of selling or
9 hiring, incorrect weights and measures or any device or instrument

1 used or calculated to falsify any weights and measures.

2 (b) Use or have in possession for current use in the buying or
3 selling of any commodity or thing, for hire or award, or in the
4 computation of any basic charge or payment for services rendered on
5 the basis of weights and measures or in the determination of
6 weights and measures, when a charge is made for the determination,
7 weights and measures that have not been tested and sealed by the
8 appropriate authority, unless 1 or more of the following conditions
9 are met:

10 (i) A properly executed and completed placed-in-service report
11 has been delivered to the director as notification that the weights
12 and measures have been placed in service by a registered
13 serviceperson.

14 (ii) Permission to use the weights and measures has been
15 received from the appropriate authority.

16 (iii) The weights and measures have been exempted from sealing
17 or testing requirements by section 10 or by rule of the director
18 issued under section 8.

19 (c) Dispose of rejected or condemned weights and measures in a
20 manner contrary to law or rule.

21 (d) Remove from weights and measures, contrary to law or rule,
22 a tag, seal, or mark placed on the weights and measures by the
23 appropriate authority.

24 (e) Sell, offer, or expose for sale less than the quantity he
25 or she represents of a commodity, thing, or service.

26 (f) Take more than the quantity he or she represents of a
27 commodity, thing, or service when, as buyer, he or she furnishes

1 the weight of the commodity, thing, or service or the measure of
2 the commodity, thing, or service by means of which the amount of
3 the commodity, thing, or service is determined.

4 (g) Advertise, offer, expose for sale, or sell a commodity,
5 thing, or service in a condition or manner contrary to law.

6 (h) Use in retail trade, except in the preparation of packages
7 put up in advance of sale and of medical prescriptions, weights and
8 measures that are not so positioned that their indications may be
9 accurately read and the weighing or measuring operation observed
10 from some position which may reasonably be occupied by a customer.

11 (i) Violate a provision of this act or of the rule promulgated
12 under this act for which a specific penalty has not been
13 prescribed.

14 (j) Sell, offer, or expose for sale to licensed wholesale
15 distributors and dealers gasoline or any middle distillate
16 petroleum product on any basis other than a U.S. gallon of 231
17 cubic inches or metric equivalent unless freely requested to do so
18 in writing by a licensed wholesale distributor, dealer, or end user
19 for an annual period of time or for the length of the contract.
20 This subdivision does not apply to the sale or offer for sale of
21 number 4, 5, or 6 petroleum fuels as described as having American
22 petroleum institute gravity at 60°F of 28 or less, a specific
23 gravity greater than .8871 and does not apply to the sale or
24 exchange of gasoline or any middle distillate petroleum product
25 among petroleum refiners.

26 (k) Deliver or issue a weight quantity determination or a
27 measure quantity determination upon which a commercial transaction

1 is, or is intended to be, computed without the use of weights and
2 measures.

3 (1) Fail to pay a fee or fine imposed under this act.

4 (2) A person who, by himself or herself or by the person's
5 servant or agent, or as a servant or agent of another person, fails
6 to disclose to the department any knowledge of information relating
7 to, or observation of, any device or instrument added to or
8 modifying any weight or modifying any measure for the purpose of
9 selling, offering, or exposing for sale less than the quantity
10 represented of a commodity or calculated to falsify the weight or
11 measure, if the person is an owner or employee of an entity
12 involved in the installation, repair, sale, or inspection of
13 weights and measures, is guilty of a misdemeanor and may be fined
14 not more than \$1,000.00, or imprisoned for not more than 90 days,
15 or both.

16 (3) A person who, by himself or herself or by the person's
17 servant or agent, or as a servant or agent of another person,
18 performs any of the following acts is guilty of a felony and may be
19 fined not less than \$1,000.00 or not more than \$20,000.00, by a
20 fine of not more than twice the amount of any money gained for each
21 day on which a violation has been found, by imprisonment for not
22 more than 5 years, or by all of these penalties:

23 (a) Adds to or modifies commercial weights and measures by the
24 addition of a device or instrument that would allow the sale, or
25 the offering or exposure for sale, of less than the quantity
26 represented of a commodity or the falsification of the weights and
27 measures.

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1 (b) Intentionally commits any of the acts listed in subsection
2 (1) or (2).

3 (c) Violates a prohibited act as listed in this section within
4 24 months after 2 previous violations of this section that resulted
5 in convictions.

6 (4) When a violation results in a conviction under this act,
7 the court may assess against the defendant or his or her agent the
8 costs of investigation and the money shall be paid to the agency
9 that incurred the expense.

10 (5) IN ADDITION TO ANY OTHER APPLICABLE PENALTIES PRESCRIBED
11 IN THIS ACT, <<THE DEPARTMENT MAY ASSESS THE CIVIL FINES DESCRIBED IN
12 THIS SUBSECTION.>> AN OWNER OF A MOTOR FUEL DELIVERY FACILITY THAT HAS
13 INTENTIONALLY DELIVERED LESS FUEL TO A RETAIL CUSTOMER THAN
14 INDICATED BY THE GAS PUMP METERING DEVICE IS SUBJECT TO THE
15 FOLLOWING:

16 (A) IF THE <<VIOLATION IS A FIRST VIOLATION>>, THE OWNER IS
17 RESPONSIBLE FOR A CIVIL FINE OF \$5,000.00.

18 (B) IF THE <<VIOLATION IS A SECOND VIOLATION>>, THE OWNER IS
19 RESPONSIBLE FOR A CIVIL FINE OF \$10,000.00.

20 (C) IF THE <<VIOLATION IS A THIRD VIOLATION OR A VIOLATION
21 SUBSEQUENT TO THE THIRD VIOLATION>>, THE OWNER IS RESPONSIBLE FOR A CIVIL
22 FINE OF
23 \$25,000.00.

24 (6) THE DEPARTMENT MAY CLOSE ANY FACILITY THAT IS RESPONSIBLE
25 FOR A VIOLATION DESCRIBED IN SUBSECTION (5) UNTIL THE OWNER CAN
26 DEMONSTRATE TO THE DEPARTMENT THAT THE PROBLEM IS CORRECTED.

27 (7) THE DEPARTMENT SHALL INSPECT MOTOR FUEL FACILITIES WITH 3
OR MORE VIOLATIONS UNDER SUBSECTION (5) AT LEAST ANNUALLY.

(8) ANY OF THE FINES DESCRIBED IN SUBSECTION (5) MAY BE

1 EMBODIED IN A CONSENT ORDER UNDER SECTION 31A.

2 (9) ANY CIVIL FINES OR RECOVERY OF ANY ECONOMIC BENEFITS
3 ASSOCIATED WITH A VIOLATION OF THIS ACT AND COLLECTED UNDER THIS
4 SECTION SHALL BE PAID TO THE GENERAL FUND AND CREDITED TO THE
5 DEPARTMENT FOR THE ENFORCEMENT OF THIS ACT.

6 (10) AS USED IN THIS SECTION, "INTENTIONAL" MEANS THE PRESENCE
7 OF ADDITIONAL PIPING, ELECTRONIC SWITCHES, OR ANY OTHER DEVICE OR
8 ACT THAT IS DESIGNED TO REDUCE THE VOLUME OF MOTOR FUEL DELIVERED
9 AS COMPARED TO THE STATED VOLUME ON THE GAS PUMP METERING DEVICE.

10 Enacting section 1. It is the intention of the legislature
11 that the department establish periodic inspection and testing of
12 fuel delivery systems and that owners of fuel delivery systems
13 calibrate these systems periodically.