

Act No. 125
Public Acts of 2006
Approved by the Governor
May 2, 2006
Filed with the Secretary of State
May 2, 2006
EFFECTIVE DATE: May 2, 2006

**STATE OF MICHIGAN
93RD LEGISLATURE
REGULAR SESSION OF 2006**

**Introduced by Reps. Amos, Nitz, David Law, Pastor, Garfield, Hummel, Booher, Brandenburg, Emmons,
Mortimer, Drolet, Gosselin, Leland, Kathleen Law, Plakas and Polidori**

ENROLLED HOUSE BILL No. 4502

AN ACT to amend 1964 PA 283, entitled "An act to regulate and provide standards for weights and measures, and the packaging and advertising of certain commodities; to provide for a state director and other officials and to prescribe their powers and duties; to provide a fee system for certain inspections and tests; to provide penalties for fraud and deception in the use of false weights and measures and other violations; and to repeal certain acts and parts of acts," by amending section 31 (MCL 290.631), as amended by 2002 PA 208.

The People of the State of Michigan enact:

Sec. 31. (1) A person who, by himself or herself or by the person's servant or agent, or as the servant or agent of another person, engages in any of the following acts is guilty of a misdemeanor and may be fined not less than \$1,000.00 or not more than \$10,000.00, or imprisoned for not more than 1 year, or both:

(a) Use or have in possession for the purpose of using for any commercial purpose specified in section 10, sell, offer, expose for sale or hire, or have in possession for the purpose of selling or hiring, incorrect weights and measures or any device or instrument used or calculated to falsify any weights and measures.

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

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

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

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

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

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

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

(f) Take more than the quantity he or she represents of a commodity, thing, or service when, as buyer, he or she furnishes the weight of the commodity, thing, or service or the measure of the commodity, thing, or service by means of which the amount of the commodity, thing, or service is determined.

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

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

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

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

(k) Deliver or issue a weight quantity determination or a measure quantity determination upon which a commercial transaction is, or is intended to be, computed without the use of weights and measures.

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

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

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

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

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

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

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

(5) In addition to any other applicable penalties prescribed in this act, the department may assess the civil fines described in this subsection. An owner of a motor fuel delivery facility that has intentionally delivered less fuel to a retail customer than indicated by the gas pump metering device is subject to the following:

(a) If the violation is a first violation, the owner is responsible for a civil fine of \$5,000.00.

(b) If the violation is a second violation, the owner is responsible for a civil fine of \$10,000.00.

(c) If the violation is a third violation or a violation subsequent to the third violation, the owner is responsible for a civil fine of \$25,000.00.

(6) The department may close any facility that is responsible for a violation described in subsection (5) until the owner can demonstrate to the department that the problem is corrected.

(7) The department shall inspect motor fuel facilities with 3 or more violations under subsection (5) at least annually.

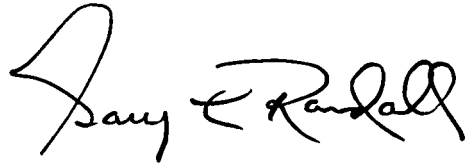
(8) Any of the fines described in subsection (5) may be embodied in a consent order under section 31a.

(9) Any civil fines or recovery of any economic benefits associated with a violation of this act and collected under this section shall be paid to the general fund and credited to the department for the enforcement of this act.

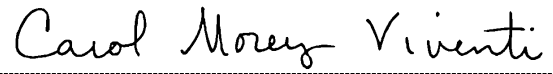
(10) As used in this section, "intentional" means the presence of additional piping, electronic switches, or any other device or act that is designed to reduce the volume of motor fuel delivered as compared to the stated volume on the gas pump metering device.

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

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved _____

Governor