

Legislative Analysis



WEIGHTS AND MEASURES AMENDMENTS

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House Bill 5595 (Substitute H-1)

Sponsor: Rep. Charles M. Brunner

House Bill 5596 (Substitute H-2)

Sponsor: Rep. Kevin Daley

Committee: Agriculture

Complete to 5-21-12

A SUMMARY OF HOUSE BILLS 5595 & 5596 AS REPORTED FROM COMMITTEE

House Bills 5595 (H-1) and 5596 (H-2) would make various amendments to the Weights and Measures Act (1964 PA 283). Each bill is discussed in detail below.

House Bill 5595 (H-1) would make the following changes:

- Specify that the definitions of basic units of weight and measure, tables, and equivalents that are to be recognized by law and govern weighing and measuring and measuring equipment in Michigan are those that are published by the National Institute of Standards and Technology (NIST), rather than the National Bureau of Standards,.
- Requires state reference standards to be maintained traceable to international system of units through calibrations by a national metrology institute and requires the standards be kept in a safe location within the department and maintained as recommended by the NIST Handbook 143, which is incorporated by reference.
- For devices placed into service after January 1, 1988, allow a non-NTEP measuring device for special use for products for which an NTEP measuring device is not available, provided all of the following are met:
 - The device owner receives written approval from the director.
 - The device is tested on an annual basis by a registered service agency.
 - The service agency would have to record all testing data and the data would have to be retained on site and be made available to the department upon request.
- Clarify that a measuring device placed into service on or after October 29, 2002, would need valid certificates of conformance and allow a non-NTEP device for special use when a NTEP measuring device is not available, provided all the following are met:
 - The device owner receives written approval from the director.
 - The device is tested on an annual basis by a registered service agency.
 - The service agency would have to record all testing data and the data would have to be retained on site and be made available to the department upon request.

- Eliminate a provision allowing for competence in a subject matter area for service persons to be demonstrated by submitting a certificate of completion of the NCWM training.
- Eliminate a provision that says documentation of competency for renewal is not required unless it is required as a result of changes in the NCWM training module.
- Require a registrant to retake the department-approved competency test every four years.
- Require the certification of standards used by registered servicepersons to be accomplished at least every two years, instead of twice per year.
- Require the registrant to submit documentation of international standards traceable calibration reports with his or her application, instead of proof of NIST accreditation.
- Require that within five business days after a device is returned to or placed into service, the original of a properly executed placed-in-service report and any official department rejection tag removed from the device must be mailed to the director at an address indicated on the tag.
- Specify the director could initiate an enforcement action against a registered serviceperson or agency for the failure of a weighing or measuring device during an official inspection within 30 days (increased from five) after being placed in service following a major overhaul or repair that may or may not have been the result of an official condemnation by a weights and measures official, or the failure to provide placed-in-service reports or other documentation as required. The act also contains other instances in which the director could bring enforcement actions against a registered serviceperson or agency.

The bill would add definitions for "commercial weighing and measuring device," "net weight," "person," "weighing and measuring device," and "weighing and measuring establishment."

The bill would eliminate the definition of "ton," which is re-defined in House Bill 5596, "cord," and "barrel."

House Bill 5596 (H-2) would make the following changes:

- Change all references of the 2002 edition of the National Institute of Standards and Technology (NIST) handbook to the 2012 edition, therefore implementing the newest versions.
- Clarify that liquefied petroleum could be bought and sold by a flat rate price if the price is clearly and conspicuously posted for customers
- Specify that in implementing the 2012 edition of the NIST handbooks, "ton" would mean a net weight of 2,000 pounds avoirdupois.

- Specify that scales used to weigh the gross weight combination of a truck tractor with multiple trailers must be inspected annually, or upon repair or maintenance of the weights and measures device.
- Require all testing data of weights and measures devices to be recorded and retained on site and made available to the Department of Agriculture and Rural Development upon request.
- Establish advertising requirements for roadside retail locations that sell motor fuel. Specifically, one year after the bill goes into effect, advertising would have to comply with all of the following:
 - The advertised price would have to be clearly and completely posted in full, including fractional prices to the tenth of a cent.
 - The advertised price would have to include the grade of fuel being sold and comply with the abbreviations contained in the bill.
 - Require all prices be displayed at the pump, but only the price of the selected product could be displayed during the retail transaction. The bill would also require all indications on the pump display to calculate the correct total price of the purchase.
 - Require the retailer to post the conditions next to the sales price if the advertised price of motor fuel is subject to one or more conditions.
 - Require that all prices be displayed in the same size and style if the unit price for the same grade of motor fuel differs.
- Increase the fine from \$5,000 to \$10,000 for any person that assaults or inflicts a bodily injury on a department official in the performance of official duties.
- Increase the fine from \$1,000 to \$5,000 for any person that hinders or obstructs a department official in any way in the performance of official duties.
- Increase the minimum fine from \$1,000 to \$5,000 for anyone that adds to or modifies commercial weights and measures by adding a device that would allow the sale of less than the quantity represented of a commodity or the falsification of the weights and measures, someone that intentionally commits a violation under Section 31, or someone who violates the law within 24 months after two previous violations that resulted in convictions. (These are felony offenses.)
- Allow for the department to fine an individual committing a violation under Section 31 the amount of any economic benefit realized as part of the violation, in addition to the \$1,000 to \$10,000 fine already contained in the law.
- Specify that the owner of a weights and measures establishment that has three or more violations for intentionally delivering less fuel to a retail customer than indicated by pump meter would be responsible for inspection costs for up to two years (current law requires these facilities to be inspected at least annually).
- Increase the minimum and maximum civil fines that can be levied under a consent agreement for individuals that have violated the act. The act allows the director to

enter into a consent agreement with individuals that have been found in violation. The amount of the fine varies according to the violation.

The bills are tie-barred to each other, meaning neither bill can take effect unless both are signed into law.

FISCAL IMPACT:

The act currently directs that fines and the recovery of economic benefits associated with violations of the act be paid to the General Fund and credited to the Michigan Department of Agriculture and Rural Development for enforcement of the act. This revenue is treated as a restricted fund source in the department's annual budget. Over the last three fiscal years, FYs 2008-09, 2009-10 and 2010-11, department recorded "Weights and Measures fines and costs" revenue of \$329,900, \$271,100, and \$173,200, respectively. These fines and costs are related to violations of the act involving short weight or measure.

The bill would increase certain fines currently provided under the act. The amount of additional fine revenue, if any, would depend on the number of enforcement actions for violations of the act and related fines and costs assessed.

POSITIONS:

Michigan Department of Agriculture and Rural Development supports the bills. (5-16-12)

Michigan Farm Bureau supports the bills. (5-15-12)

Associated Petroleum Industries of Michigan supports the bills. (5-16-12)

Michigan Propane Gas Association supports House Bill 5596. (5-9-12)

Michigan Agri-Business Association supports House Bill 5596. (5-16-12)

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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.