



Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536

BILL



ANALYSIS

Telephone: (517) 373-5383  
Fax: (517) 373-1986

House Bill 5595 (Substitute H-1 as passed by the House)  
House Bill 5596 (Substitute H-2 as passed by the House)  
Sponsor: Representative Charles M. Brunner (H.B. 5595)  
Representative Kevin Daley (H.B. 5596)  
House Committee: Agriculture  
Senate Committee: Agriculture

Date Completed: 6-6-12

### **CONTENT**

**House Bill 5595 (H-1)** would amend the Weights and Measures Act to do the following:

- Eliminate references to the National Bureau of Standards in provisions regarding State standards of weights and measures.
- Allow a non-NTEP (National Type Evaluation Program) measuring device to be used under certain conditions.
- Eliminate references to a National Conference on Weights and Measures training module in provisions regarding the registration of servicepeople and service agencies.
- Require a registrant to take a competency test every four years.
- Eliminate provisions establishing a specific registration fee, and allow the Michigan Department of Agriculture and Rural Development (MDARD) to adjust the fee annually.

**House Bill 5596 (H-2)** would amend the Act to do the following:

- Revise provisions regarding the method of sale of liquefied petroleum gas.
- Require a scale used to weigh vehicles to be tested upon repair or maintenance, and require the owner or operator to record all testing data

and make them available to MDARD upon request.

- Prescribe requirements for the advertising of motor fuel sold at a roadside retail location.
- Increase fines for violations of the Act and rules promulgated under it.
- Require a habitual violator to be assessed the costs of facility inspection by MDARD.

The bills are tie-barred.

### **House Bill 5595 (H-1)**

#### **State Standards**

The Act provides that weights and measures in conformity with the standards of the United States as supplied to the State by the Federal government or otherwise obtained by the State for use as State primary standards, when certified as being satisfactory for use by the National Bureau of Standards, are the State primary standards of weights and measures. The bill would delete this provision.

Under the Act, the State primary standards must be kept in a safe and suitable place in the Weights and Measures Laboratory of MDARD and maintained in the calibration prescribed by the National Bureau of Standards. The bill would refer instead to the State reference standards, and would require them to be maintained traceable to the international system of units through

calibrations by a national metrology institute. The bill would eliminate the reference to the calibration prescribed by the National Bureau of Standards, and instead would require the standards to be maintained as recommended by the U.S. Department of Commerce, National Institute of Standards and Technology (NIST) Handbook 143. The Handbook would be incorporated by reference, unless otherwise noted.

#### Non-NTEP Measuring Device

Under the Act, a weight device manufactured or placed in service after January 1, 1988, must have valid certificates of conformance before use for commercial or law enforcement purposes. The bill would eliminate the reference to the device's date of manufacture. In addition, a non-NTEP measuring device for special use could be used for products for which an NTEP measuring device was not readily available, if all of the following conditions were met:

- The device owner received written approval from the MDARD Director.
- The device was tested annually by a registered service agency.
- The registered service agency recorded all testing data and the records were retained on site and made available to MDARD upon request.

The bill would add similar provisions with regard to a measuring device placed in service on or after October 29, 2002.

("National Type Evaluation Program" ("NTEP") means that program administered by the National Conference on Weights and Measures (NCWM) in cooperation with the states, the private sector, and the NIST for determining on a uniform basis conformance of a type. "Type" means a model or models of a particular device measurement system, instrument, element, or a field standard that positively identifies the design and that may vary in its measurement ranges, size, performance, and operating characteristics as specified in the certificate of conformance.

"Registered service agency" means any agency, firm, company, or corporation that installs, services, repairs, or reconditions commercial weights and measures and that

holds a registration issued by the MDARD Director.)

#### Serviceperson/Service Agency Registration

The Act requires the MDARD Director to issue a registration for servicepeople and service agencies seeking registration in accordance with the standards prescribed for the method of sale of a commodity (which House Bill 5596 (H-2) would amend as described below). Registration is voluntary.

A person may apply for initial or renewal registration as a serviceperson or service agency in specific competency areas. A person may demonstrate competence in a subject matter area either by submitting a certificate of completion of an NCWM training module described in the Act for that area, or by scoring at least 80% on an MDARD-approved competency test for that area in compliance with the standards. Documentation of competency is not required for renewal unless it is required as a result of changes in the training module and those changes are adopted by rule of the MDARD Director or as otherwise required by law. The bill would eliminate the references to the NCWM training module. Under the bill, a registrant would have to retake the competency test every four years or as otherwise required by law.

Currently, the fee for registration is \$150 per service agency and \$50 per serviceperson. Under the bill, the fee would have to be established in accordance with Section 10b(1). (That section allows MDARD annually to adjust the schedule of fees for reinspections, voluntary registrations, type evaluations, special weights and measures inspections, and other special services requested of the Department to provide that each category of fee charged is sufficient to cover the cost of the activities and the aggregate of fees collected is sufficient to pay for all salaries and other associated expenses.)

A registrant must accomplish certification of standards used by a registered serviceperson or agency at least biannually. The bill specifies that certification would have to be accomplished biennially. Currently, the registrant must submit documentation of NIST accreditation with the registration or renewal application. Under the bill, instead, the registrant would

have to submit documentation of international standards traceable calibration reports.

#### Enforcement Action

The Act authorizes the MDARD Director to initiate an enforcement action against a registered serviceperson or service agency for any of the following:

- Returning to commercial use of a device tagged "not sealed".
- Placing a device in service with improper or insufficient standards.
- Falsifying a placed-in-service report or test report.
- Placing in service, or allowing to remain in service, without notifying the Director, an incorrect weighting or measuring device.
- Failure of a weighing or measuring device during an official inspection within 30 days after being placed in service following an initial installation or a major overhaul or repair, as the result of an official condemnation.

The bill would eliminate the reference to a major overhaul or repair as the result of an official condemnation. In addition, the bill would add failure to provide placed-in-service reports or other required documentation.

("Weighing and measuring device" would mean all instruments and devices of every kind used to determine the quantity of any commodity. The term would include weights and measures and any appliance and accessories associated with any of these instruments and devices, except meters, appliance, and accessories that are part of a public utility regulated by the Public Service Commission.)

### **House Bill 5596 (H-2)**

#### Civil Fine Revenue

Under the Act, money collected by MDARD for special services, fees, and penalties must be paid into the General Fund and credited to the Department for weights and measures programs. The bill would refer specifically to civil fines, rather than penalties, in this provision.

#### Method of Sale

Under the Act, the method of sale of a commodity sold in Michigan must conform to the "Uniform Regulation for the Method of Sale of Commodities" published in the 2002 edition of the NIST Handbook 130, which is incorporated by reference except as otherwise provided. The bill would refer to the 2012 edition of Handbook 130 throughout the Act, and also would refer to the 2012 edition of Handbook 44.

The method of sale for liquefied petroleum gas sold in Michigan is excluded from conforming to the Handbook. The bill would delete this provision.

The buying and selling of liquefied petroleum gas may be conducted by the pound, gallon, metered cubic foot, or a flat rate price, if the rate is clearly published and documented. Upon a customer's request, a retailer must disclose the actual pounds, gallons, or metered cubic feet included in the flat rate price. The bill provides that the buying and selling of liquefied petroleum gas also could be conducted by a flat rate price, if the rate were clearly and conspicuously posted for potential customer viewing.

#### Definition of "Ton"

The Act defines "ton" as a weight of 2,000 pounds avoirdupois. (The avoirdupois system is the everyday system of weight used in the U.S. and is based on a pound of 16 ounces.) The bill specifies that this definition would apply for purposes of implementing the 2012 editions of the NIST Handbooks 44 and 130. The bill would define "gross ton" as a weight of 2,240 pounds avoirdupois.

#### Vehicle Weight Scale

The Act requires a scale used to weigh vehicles to be tested at least annually. Under the bill, the scale also would have to be tested upon repair or maintenance of the weights and measures device. All testing data would have to be recorded and the owner or operator would have to maintain them on site and make them available to MDARD for review upon request.

### Motor Fuel: Roadside Retail Location

Beginning one year after the bill's effective date, if motor fuel were sold at a roadside retail location, the advertising would have to comply with the requirements described below.

The price advertised would have to be clearly and completely posted in full, including any fractional prices, to the 10th of a cent. In addition, the price advertised would have to include the grade of fuel being sold, with specified abbreviations allowed. All prices would have to be displayed at the pump, but only the unit price of the selected product could be displayed during the transaction. All indications on the pump display would have to calculate the correct total price of the purchase.

If the advertised price of the fuel were subject to one or more conditions for sale at that price, the retailer would have to post them immediately next to the sales prices with equal illumination in lettering of the same style and of at least half the size used to post the sale price.

If the unit price for the same grade of motor fuel differed, all prices would have to be displayed in lettering of the same style and size.

### Violations & Penalties

Assault & Obstruction. Under the Act, a person who assaults or inflicts a bodily injury upon the MDARD Director, an authorized representative of the Director, the Deputy Director, any inspector, or a sealer or deputy sealer in the performance of his or her official duties is guilty of a misdemeanor punishable by a maximum fine of \$5,000 and/or imprisonment for up to two years. The bill would increase the maximum fine to \$10,000.

A person who hinders or obstructs the Director, an authorized representative, the Deputy Director, an inspector, or a sealer or deputy sealer in the performance of his or her official duties is guilty of a misdemeanor punishable by a maximum fine of \$1,000 and/or imprisonment for up to one year. The bill would increase the maximum fine to \$5,000.

Prohibited Acts. A person who, by himself or herself or by his or her servant or agent, or as the servant or agent of another person, engages in any of the following is guilty of a misdemeanor punishable by a fine of at least \$1,000 but not more than \$10,000, and/or imprisonment for up to one year:

- Using or possessing for use for certain commercial purposes incorrect weights and measures or any device or instrument used or calculated to falsify any weights and measures.
- Using or possessing for use in the buying or selling of any commodity or thing weights and measures that have not been tested and sealed by the appropriate authority, subject to specific exceptions.
- Disposing of rejected or condemned weights and measures in a manner contrary to law or rule.
- Removing from weights and measures, contrary to law or rule, a tag, seal, or mark placed on them by the appropriate authority.
- Selling less than the quantity the person represents of a commodity, thing, or service.
- Taking more than the quantity the person represents of a commodity, thing, or service when, as buyer, he or she furnishes the weight or the measure that determines the amount.
- Advertising or selling a commodity, thing, or service in a condition or manner contrary to law.
- Using in retail trade weights and measures that are not positioned so that their indications may be accurately read and the weighing or measuring operation observed from a customer's reasonable position.
- Violating a provision of the Act or a rule for which a specific penalty has not been prescribed.
- Selling to licensed wholesale distributors and dealers gasoline or any middle distillate petroleum product on any basis other than that prescribed in the Act unless freely requested to do so by a distributor, dealer, or end user.
- Delivering or issuing a weight or measure quantity determination upon which a commercial transaction is, or is intended to be, computed without the use of weights and measures.
- Failing to pay a fee or fine imposed under the Act.

Under the bill, the penalty also would include the amount of any economic benefit realized as a result of the violation.

Other Violations. A person who, by himself or herself or a servant or agent, or as another person's servant or agent, performs any of the following acts is guilty of a felony punishable by a fine of at least \$1,000 but not more than \$20,000; a fine of not more than twice the amount of any money gained for each day on which a violation has been found; imprisonment for up to five years; or any combination of those penalties:

- The intentional commission of any of the acts already listed.
- A violation within 24 months after two previous violations that resulted in convictions.
- The addition to or modification of commercial weights and measures by the addition of a device or instrument that would allow the sale of less than the quantity represented of a commodity or the falsification of the weights and measures.

The bill would increase the minimum fine to \$5,000.

"Intentional" means the presence of additional piping, electronic switches, or any other device or act designed to reduce the volume of motor fuel delivered as compared to the stated volume on the gas metering device. The bill would delete this definition.

Civil Fines. In addition to other applicable penalties, MDARD may assess the 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 the following civil fines:

- \$5,000 for a first violation.
- \$10,000 for a second violation.
- \$25,000 for a third or subsequent violation.

The Department annually must inspect facilities with three or more of these violations. Under the bill, all inspection costs would have to be assessed to the owner of the weights and measures establishment for up to two years.

(Under House Bill 5595 (H-1), "weighing and measuring establishment" would mean a

location with one or more commercial weighing and measuring devices or any operation that employs such devices that are mobile. "Commercial weighing and measuring device" would mean any weights and measures or weighing and measuring device, including any accessory attached to or used in connection with the device that is designed or installed in a manner that its operation affects or may affect the device's accuracy, used or employed in commerce for any of the following:

- Establishing the size, quantity, extent, area, or measurement of any commodity sold, offered, or submitted for hire.
- Computing any basic charge or payment for services rendered on the basis of weight, measure, or count.
- Establishing eligibility for any award.)

Consent Agreement. Upon determination that a person has violated the Act or rules promulgated under it, the MDARD Director may enter into a consent agreement for the assessment of a civil fine as follows:

- For a first violation, at least \$50 but not more than \$1,000 plus the amount of any economic benefit associated with the violation.
- For a second violation within two years of the first, at least \$100 but not more than \$5,000, plus actual costs of the investigation and the amount of any economic benefit associated with the violation.
- For a third violation within two years of the first, at least \$500 but not more than \$10,000, plus actual costs of the investigation and the amount of any economic benefit associated with the violation.

Under the bill, the consent agreement could include the actual cost of the investigation for a first violation, twice the amount of the associated economic benefit for a second violation, and three times the amount of the associated economic benefit for a third violation. Additionally, for the first violation, the bill would increase the minimum civil fine to \$150 and the maximum fine to \$2,500. The bill would increase the minimum fine for a second violation to \$500.

If a person alleged to have violated the Act or rules does not enter into a written

consent agreement, the MDARD Director may do either of the following:

- Initiate a criminal prosecution.
- Commence an administrative hearing, in the case of a person registered under the Act, or commence a civil violation proceeding regarding any other person.

Under the bill, the violator would have 15 days to enter into a consent agreement. The bill also would allow the MDARD Director to request the Attorney General to initiate a criminal prosecution, rather than initiating it himself or herself.

MCL 290.602 et al.

Legislative Analyst: Julie Cassidy

### **FISCAL IMPACT**

House Bill 5595 (H-1) would have no fiscal impact on State or local government.

House Bill 5596 (H-2) could increase the amount of fine revenue currently collected for enforcement of the Act by the Department of Agriculture and Rural Development, depending on the number of enforcement actions and costs assessed, an amount that cannot be determined at this time. Revenue from weights and measures fines and costs totaled \$329,900 during FY 2008-09; for FY 2009-10, \$271,100; and for FY 2010-11, \$173,200.

Fiscal Analyst: Bruce Baker

S1112\s5595sa.

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.