

SUBSTITUTE FOR
HOUSE BILL NO. 5595

A bill to amend 1964 PA 283, entitled
"Weights and measures act,"
by amending sections 2, 3, 4, 5, 6, 9a, and 9b (MCL 290.602,
290.603, 290.604, 290.605, 290.606, 290.609a, and 290.609b),
section 2 as amended and sections 9a and 9b as added by 2002 PA
208.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. As used in this act:

2 (a) "Automatic checkout system" means an electronic device,
3 computer, or machine that determines the price of a consumer item
4 by using a product identity code and may, but is not required to,
5 include an optical scanner.

6 ~~—— (b) "Barrel", when used in connection with fermented liquor,~~
7 ~~means a unit of 31 gallons.~~

1 **(B)** ~~(e)~~—"Certificate of conformance" means a document issued
 2 by the NCWM based on testing by a participating laboratory that
 3 constitutes evidence of conformance of a type.

4 **(C)** ~~(d)~~—"Commodity in package form" means a commodity put up
 5 or packaged in any manner in advance of sale in units suitable for
 6 either wholesale or retail sale including an individual item or lot
 7 of any commodity not in a form as described in this subdivision but
 8 upon which there is marked a selling price based on an established
 9 price per unit of weight or of measure. Commodity in package form
 10 does not include an auxiliary shipping container enclosing packages
 11 that conform to the requirements of this act.

12 **(D) "COMMERCIAL WEIGHING AND MEASURING DEVICE" MEANS ANY**
 13 **WEIGHTS AND MEASURES OR WEIGHING AND MEASURING DEVICE, INCLUDING**
 14 **ANY ACCESSORY ATTACHED TO OR USED IN CONNECTION WITH THE WEIGHING**
 15 **OR MEASURING DEVICE THAT IS DESIGNED OR INSTALLED IN A MANNER THAT**
 16 **ITS OPERATION AFFECTS OR MAY AFFECT THE ACCURACY OF THE DEVICE,**
 17 **USED OR EMPLOYED IN COMMERCE FOR ANY OF THE FOLLOWING:**

18 **(i) ESTABLISHING THE SIZE, QUANTITY, EXTENT, AREA, OR**
 19 **MEASUREMENT OF ANY COMMODITY SOLD, OFFERED, OR SUBMITTED FOR HIRE.**

20 **(ii) COMPUTING ANY BASIC CHARGE OR PAYMENT FOR SERVICES**
 21 **RENDERED ON THE BASIS OF WEIGHT, MEASURE, OR COUNT.**

22 **(iii) ESTABLISHING ELIGIBILITY FOR ANY AWARD.**

23 **(e) "Consumer package" means a ~~commodity in package form~~ that**
 24 **is customarily produced or distributed for SALE THROUGH RETAIL**
 25 **SALES AGENCIES OR INSTRUMENTALITIES FOR consumption OR USE by**
 26 **individuals ~~or for use by individuals~~ for the purposes of personal**
 27 **care or in performance of services ordinarily rendered in or about**

1 the household or in connection with personal possessions. ~~and that~~
2 ~~usually is consumed or expended in the course of that consumption~~
3 ~~or use.~~

4 ~~—— (f) "Cord", when used in connection with wood intended for~~
5 ~~fuel purposes or for pulpwood, means the amount of wood that is~~
6 ~~contained in a space of 128 cubic feet when the wood is ranked and~~
7 ~~well stowed.~~

8 (F) ~~(g)~~ "Department" means the ~~Michigan~~ department of
9 agriculture **AND RURAL DEVELOPMENT.**

10 (G) ~~(h)~~ "Director" means the director of the ~~Michigan~~
11 ~~department of agriculture~~ or his or her designee.

12 (H) ~~(i)~~ "Inspector" means an employee or agent of the
13 department authorized to enforce this act.

14 (I) ~~(j)~~ "NCWM" means the national conference on weights and
15 measures, **INC.**

16 (J) **"NET WEIGHT" MEANS THE WEIGHT OF A COMMODITY EXCLUDING ANY**
17 **MATERIALS, SUBSTANCES, OR ITEMS NOT CONSIDERED TO BE PART OF THE**
18 **COMMODITY. MATERIALS, SUBSTANCES, OR ITEMS NOT CONSIDERED TO BE**
19 **PART OF THE COMMODITY INCLUDE CONTAINERS, CONVEYANCES, BAGS,**
20 **WRAPPERS, PACKAGING MATERIALS, LABELS, INDIVIDUAL PIECE COVERINGS,**
21 **DECORATIVE ACCOMPANIMENTS, PRIZES, COUPONS, AND, IN THE CASE OF**
22 **EDIBLE COMMODITIES, ANYTHING THAT IS NONEDIBLE.**

23 (k) "NIST" means the United States department of commerce,
24 national institute of standards and technology.

25 (l) "NTEP" means the national type evaluation program
26 administered by the NCWM, in cooperation with the states, the
27 private sector, and the NIST for determining on a uniform basis

1 conformance of a type.

2 (m) "Nonconsumer package" means ~~any commodity in a~~ package
3 ~~form~~ other than a consumer package and includes, but is not limited
4 to, a package ~~designed~~ **INTENDED** solely for industrial or
5 institutional use or for ~~only~~ wholesale distribution.

6 (n) "Participating laboratory" means a state measurement
7 laboratory that has been accredited by NCWM to conduct a type
8 evaluation under the NTEP and determined otherwise acceptable to
9 the director.

10 (O) **"PERSON" MEANS ANY INDIVIDUAL, PARTNERSHIP, CORPORATION,**
11 **ASSOCIATION, GOVERNMENTAL ENTITY, OR OTHER LEGAL ENTITY.**

12 (P) ~~(e)~~ "Placed-in-service report" means the approved form
13 issued to registered ~~service persons~~ **SERVICEPERSONS** and registered
14 service agencies for their use in accordance with the requirements
15 of section 9b.

16 (Q) ~~(p)~~ "Registered service agency" means any agency, firm,
17 company, or corporation that installs, services, repairs, or
18 reconditions commercial weights and measures and that holds a
19 registration issued by the director.

20 (R) ~~(q)~~ "Registered ~~service person~~ **SERVICEPERSON**" means an
21 individual who installs, services, repairs, or reconditions
22 commercial weights and measures and who holds a registration issued
23 by the director.

24 (S) ~~(r)~~ "Rule" means an administrative rule promulgated ~~under~~
25 **PURSUANT TO** the administrative procedures act of 1969, 1969 PA 306,
26 MCL 24.201 to 24.328.

27 (T) ~~(s)~~ "Sell" or "sale" means sale, barter, or exchange.

1 ~~—— (t) "Ton" means a unit of 2,000 pounds avoirdupois weight.~~

2 (u) "Type" means a model **OR MODELS** of a particular **DEVICE**
3 measurement system, instrument, element, or a field standard that
4 positively identifies the design and that may vary in its
5 measurement ranges, size, performance, and operating
6 characteristics as specified in the certificate of conformance.

7 (v) "Type evaluation" means the testing, examination, and
8 evaluation of a type by a participating laboratory **UNDER THE NTEP.**

9 (w) "Weight", in connection with any commodity **OR SERVICE**,
10 means net weight.

11 (x) "Weights and measures" means weights and measures of every
12 kind, instruments and devices for weighing and measuring, grain
13 moisture meters, and any appliances and accessories associated with
14 any or all of those instruments and devices. Weights and measures
15 include automatic checkout systems. Weights and measures do not
16 include meters for the measurement of electricity, natural or
17 manufactured gas, water, or the usage of communications services
18 when any of these meters are regulated and tested as part of a
19 public utilities system.

20 (Y) **"WEIGHING AND MEASURING DEVICE" MEANS ALL INSTRUMENTS AND**
21 **DEVICES OF EVERY KIND USED TO DETERMINE THE QUANTITY OF ANY**
22 **COMMODITY AND INCLUDES WEIGHTS AND MEASURES AND ANY APPLIANCE AND**
23 **ACCESSORIES ASSOCIATED WITH ANY OF THESE INSTRUMENTS AND DEVICES,**
24 **EXCEPT METERS, APPLIANCES, AND ACCESSORIES THAT ARE PART OF A**
25 **PUBLIC UTILITY REGULATED BY THE MICHIGAN PUBLIC SERVICE COMMISSION.**

26 (Z) **"WEIGHING AND MEASURING ESTABLISHMENT" MEANS A LOCATION**
27 **WITH 1 OR MORE COMMERCIAL WEIGHING AND MEASURING DEVICES OR ANY**

1 **OPERATION THAT EMPLOYS COMMERCIAL WEIGHING AND MEASURING DEVICES**
2 **THAT ARE MOBILE.**

3 Sec. 3. The system of weights and measures in customary use in
4 the United States and the metric system of weights and measures are
5 jointly recognized, and one or the other of these systems or both
6 shall be used, for all commercial purposes in this state. The
7 definitions of basic units of weight and measure, the tables of
8 weight and measure, and weights and measures equivalents, as
9 published by the ~~national bureau of standards,~~ **NIST**, are recognized
10 and shall govern weighing and measuring equipment and transactions
11 in this state.

12 Sec. 4. ~~Weights and measures in conformity with the standards~~
13 ~~of the United States as supplied to this state by the federal~~
14 ~~government or otherwise obtained by this state for use as state~~
15 ~~primary standards, when certified as being satisfactory for use by~~
16 ~~the national bureau of standards, shall be the state primary~~
17 ~~standards of weights and measures.~~ The state ~~primary~~ **REFERENCE**
18 standards shall **BE MAINTAINED TRACEABLE TO THE INTERNATIONAL SYSTEM**
19 **OF UNITS THROUGH CALIBRATIONS BY A NATIONAL METROLOGY INSTITUTE AND**
20 **SHALL** be kept in a safe and suitable place in the weights and
21 measures laboratory of the department ~~of agriculture~~ and shall be
22 ~~maintained in the calibration prescribed by the national bureau of~~
23 ~~standards.~~ **AS RECOMMENDED BY THE NIST HANDBOOK 143, WHICH IS**
24 **INCORPORATED BY REFERENCE, UNLESS OTHERWISE NOTED.** The state
25 primary standards shall not be removed from the weights and
26 measures laboratory except for repairs or certification. The state
27 primary standards shall be used only to verify the secondary

1 standards and for scientific purposes.

2 Sec. 5. In addition to the state primary standards provided
3 for in section 4, this state shall supply at least 1 complete set
4 of copies of the state primary standards to be kept in the weights
5 and measures laboratory of the department ~~of agriculture~~ to be
6 known as secondary standards. This state shall also supply field
7 standards and equipment as may be found necessary to carry out this
8 act. The secondary standards shall be verified upon their initial
9 receipt and as often thereafter as the director considers
10 necessary. The field standards shall be verified upon their initial
11 receipt and at least once every 5 years thereafter. The secondary
12 standards shall be verified by direct comparison with the state
13 primary standards. The field standards shall be verified by direct
14 comparison with the secondary standards.

15 Sec. 6. The ~~state director of agriculture~~ by virtue of his **OR**
16 **HER** office shall be state director of weights and measures during
17 his **OR HER** term of office. His **OR HER** deputy shall be deputy
18 director of weights and measures, and all inspectors appointed by
19 the director shall be state inspectors and sealers of weights and
20 measures.

21 Sec. 9a. (1) A weighing device ~~manufactured or placed~~ in
22 service after January 1, 1988 shall have valid certificates of
23 conformance before use for commercial ~~purposes~~ or law enforcement
24 purposes. **HOWEVER, A NON-NTEP MEASURING DEVICE FOR SPECIAL USE MAY**
25 **BE USED FOR PRODUCTS FOR WHICH AN NTEP MEASURING DEVICE IS NOT**
26 **READILY AVAILABLE, IF ALL OF THE FOLLOWING CONDITIONS ARE MET:**

27 **(A) THE DEVICE OWNER RECEIVES WRITTEN APPROVAL FROM THE**

1 DIRECTOR.

2 (B) THE DEVICE IS TESTED ON AN ANNUAL BASIS BY A REGISTERED
3 SERVICE AGENCY.

4 (C) THE REGISTERED SERVICE AGENCY RECORDS ALL TESTING DATA AND
5 THE RECORDS ARE RETAINED ON SITE AND MADE AVAILABLE TO THE
6 DEPARTMENT UPON REQUEST.

7 (2) A measuring device ~~manufactured or placed in service 6~~
8 ~~months ON OR~~ after the effective date of the amendatory act that
9 ~~added this section~~ OCTOBER 29, 2002, shall have valid certificates
10 of conformance before use for commercial ~~purposes or law~~
11 enforcement purposes. HOWEVER, A NON-NTEP MEASURING DEVICE FOR
12 SPECIAL USE MAY BE USED FOR PRODUCTS FOR WHICH AN NTEP MEASURING
13 DEVICE IS NOT READILY AVAILABLE, IF ALL OF THE FOLLOWING CONDITIONS
14 ARE MET:

15 (A) THE DEVICE OWNER RECEIVES WRITTEN APPROVAL FROM THE
16 DIRECTOR.

17 (B) THE DEVICE IS TESTED ON AN ANNUAL BASIS BY A REGISTERED
18 SERVICE AGENCY.

19 (C) THE REGISTERED SERVICE AGENCY RECORDS ALL TESTING DATA AND
20 THE RECORDS ARE RETAINED ON SITE AND MADE AVAILABLE TO THE
21 DEPARTMENT UPON REQUEST.

22 (3) The director may operate a participating laboratory as
23 part of NTEP. The director may charge and collect fees pursuant to
24 section 10b for services rendered by the participating laboratory.

25 Sec. 9b. (1) The director shall issue a registration for
26 ~~service persons~~ SERVICEPERSONS and service agencies seeking
27 registration under this section in accordance with the standards

1 described in section 28c. Registration with the director under this
2 section is voluntary.

3 (2) A person may apply for initial and renewal registration as
4 a ~~service person~~ **SERVICEPERSON** or service agency in **SPECIFIC**
5 competency areas. Competence in a subject matter area may be
6 demonstrated by ~~either submitting a certificate of completion of~~
7 ~~the NCWM training module described in section 28c for that area or~~
8 ~~by scoring at least 80% on a department-approved competency test~~
9 for that area in compliance with the standards described in section
10 28c. ~~Documentation of competency is not required for renewal unless~~
11 ~~documentation of competency is required as a result of changes in~~
12 ~~the NCWM training module and those changes are adopted by rule of~~
13 ~~the director~~ **A REGISTRANT SHALL RETAKE THE DEPARTMENT-APPROVED**
14 **COMPETENCY TEST EVERY 4 YEARS** or as otherwise required by law.

15 (3) The term of registration is 2 years from the date of
16 issuance. A registration may be transferred to a different
17 **REGISTERED** service agency if the registration is retained by the
18 original ~~service person~~ **SERVICEPERSON** and the new service agency
19 pays the service agency registration fee.

20 (4) ~~Subject to section 10b(1), the~~ **THE** fee for registration
21 under this section is ~~\$150.00 per service agency and \$50.00 per~~
22 ~~service person.~~ **SHALL BE ESTABLISHED IN ACCORDANCE WITH SECTION**
23 **10B(1).**

24 (5) Certification of standards used by the registered ~~service~~
25 ~~person~~ **SERVICEPERSON** or registered service agency shall be
26 accomplished by the registrant at least ~~biannually.~~ **BIENNIALY.** The
27 certification of standards may be done at any ~~participating~~

1 **APPROVED** laboratory. The registrant shall submit documentation of
2 ~~NIST accreditation~~ **INTERNATIONAL STANDARDS TRACEABLE CALIBRATION**
3 **REPORTS** with the registration or renewal application.

4 (6) **WITHIN 5 BUSINESS DAYS AFTER A DEVICE IS RETURNED TO**
5 **SERVICE OR PLACED IN SERVICE, THE ORIGINAL OF A PROPERLY EXECUTED**
6 **PLACED-IN-SERVICE REPORT, TOGETHER WITH ANY OFFICIAL DEPARTMENT**
7 **REJECTION TAG REMOVED FROM THE DEVICE, SHALL BE MAILED TO THE**
8 **DIRECTOR AT AN ADDRESS INDICATED ON THE TAG.**

9 (7) ~~(6)~~—The director may deny, suspend, or revoke a
10 registration for a violation of this act or rules ~~adopted~~
11 **PROMULGATED** under this act. Enforcement actions include, but are
12 not limited to, the following:

13 (a) Written warning.

14 (b) Conference with the director.

15 (c) Suspension of the registration.

16 (d) Revocation of the registration.

17 (8) ~~(7)~~—Before the suspension or revocation of a registration,
18 the director shall notify the registrant in writing stating the
19 reasons for the registration being subject to suspension or
20 revocation and advising that the registration shall be suspended or
21 revoked 15 days after the sending of the notice unless the
22 registrant files a request for a hearing with the department within
23 that 15-day period. If a written request for a hearing is not filed
24 within the 15-day period, the department shall suspend or revoke
25 the registration.

26 (9) ~~(8)~~—A notice under subsection ~~(7)~~ **(8)** is considered
27 properly served when it is personally delivered to the registrant

1 or when it is sent by registered or certified mail, return receipt
2 requested, to the registrant's last known address.

3 (10) ~~(9)~~ Except as otherwise provided for in this act, the
4 director may initiate **AN** enforcement action against a registered
5 ~~service person~~ **SERVICEPERSON** or registered service agency for any
6 or all of the following:

7 (a) Failure of a weighing ~~and~~ **OR** measuring device during an
8 official inspection within 30 days after being placed in service
9 following an initial installation. ~~or following a major overhaul or~~
10 ~~repair, as the result of an official condemnation.~~

11 (B) **FAILURE OF A WEIGHING OR MEASURING DEVICE DURING AN**
12 **OFFICIAL INSPECTION WITHIN 30 DAYS AFTER BEING PLACED IN SERVICE**
13 **FOLLOWING A MAJOR OVERHAUL OR REPAIR THAT MAY OR MAY NOT HAVE BEEN**
14 **THE RESULT OF AN OFFICIAL CONDEMNATION BY A WEIGHTS AND MEASURES**
15 **OFFICIAL.**

16 (C) ~~(b)~~ The return to commercial use of a device tagged "not
17 sealed".

18 (D) ~~(c)~~ Placing a device in service with improper or
19 insufficient standards.

20 (E) ~~(d)~~ Falsifying a placed-in-service report or test report.

21 (F) ~~(e)~~ Placing in service or allowing to remain in service,
22 without notifying the director, an incorrect weighing or measuring
23 device. ~~Within 5 business days after a device is restored to~~
24 ~~service or placed in service, the original of a properly executed~~
25 ~~placed in service report, together with any official rejection tag~~
26 ~~removed from the device, shall be mailed to the director.~~

27 (G) **FAILURE TO PROVIDE PLACED-IN-SERVICE REPORTS OR OTHER**

House Bill No. 5595 (H-1) as amended May 22, 2012

1 **DOCUMENTATION AS REQUIRED BY THIS SECTION.**

2 Enacting section 1. This amendatory act does not take effect

3 unless [House Bill No. 5596

4] of the 96th Legislature is enacted into law.