

HOUSE BILL No. 5595

May 3, 2012, Introduced by Reps. Brunner, Rendon, Jenkins, Daley, Graves, Kurtz, Damrow, Johnson, McBroom, Outman, Muxlow, Goike, LaFontaine, Glardon, Tyler, Santana, Smiley, Talabi, Potvin, Hovey-Wright and Oakes and referred to the Committee on Agriculture.

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.~~

8 (B) ~~(e)~~ "Certificate of conformance" means a document issued

1 by the NCWM based on testing by a participating laboratory that
 2 constitutes evidence of conformance of a type.

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

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

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

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

21 (iii) ESTABLISHING ELIGIBILITY FOR ANY AWARD.

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

1 ~~usually is consumed or expended in the course of that consumption~~
2 ~~or use.~~

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

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

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

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

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

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

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

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

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

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

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

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

(Q) ~~(p)~~ "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 director.

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

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

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

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

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

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

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

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

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

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

1 **THAT ARE MOBILE.**

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

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

27 Sec. 5. In addition to the state primary standards provided

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

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

19 Sec. 9a. (1) A weighing device ~~manufactured or~~ placed in
20 service after January 1, 1988 shall have valid certificates of
21 conformance **OR BE TESTED ON AN ANNUAL BASIS BY A REGISTERED SERVICE**
22 **AGENCY** before use for commercial ~~purposes~~ or law enforcement
23 purposes. **THE REGISTERED SERVICE AGENCY SHALL RECORD ALL TESTING**
24 **DATA, AND THE RECORDS SHALL BE RETAINED ON SITE AND MADE AVAILABLE**
25 **TO THE DEPARTMENT FOR REVIEW UPON REQUEST.**

26 (2) A measuring device ~~manufactured or~~ placed in service ~~6~~
27 ~~months~~ **ON OR** after the effective date of the amendatory act that

~~added this section~~ OCTOBER 29, 2002 shall have valid certificates of conformance **OR BE TESTED ON AN ANNUAL BASIS BY A REGISTERED SERVICE AGENCY** before use for commercial ~~purposes or law~~ enforcement purposes. **THE REGISTERED SERVICE AGENCY SHALL RECORD ALL TESTING DATA AND THE RECORDS SHALL BE RETAINED ON SITE AND MADE AVAILABLE TO THE DEPARTMENT FOR REVIEW UPON REQUEST.**

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

Sec. 9b. (1) The director shall issue a registration for ~~service persons~~ **SERVICEPERSONS** and service agencies seeking registration under this section in accordance with the standards described in section 28c. Registration with the director under this section is voluntary.

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

(3) The term of registration is 2 years from the date of

1 issuance. A registration may be transferred to a different
 2 **REGISTERED** service agency if the registration is retained by the
 3 original ~~service person~~ **SERVICEPERSON** and the new service agency
 4 pays the service agency registration fee.

5 (4) ~~Subject to section 10b(1), the~~ **THE** fee for registration
 6 under this section is ~~\$150.00 per service agency and \$50.00 per~~
 7 ~~service person.~~ **SHALL BE ESTABLISHED IN ACCORDANCE WITH SECTION**
 8 **10B(1).**

9 (5) Certification of standards used by the registered ~~service~~
 10 ~~person~~ **SERVICEPERSON** or registered service agency shall be
 11 accomplished by the registrant at least ~~biannually.~~ **BIENNIALY.** The
 12 certification of standards may be done at any ~~participating~~
 13 **APPROVED** laboratory. The registrant shall submit documentation of
 14 ~~NIST accreditation~~ **INTERNATIONAL STANDARDS TRACEABLE CALIBRATION**
 15 **REPORTS** with the registration or renewal application.

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

21 (7) ~~(6)~~ The director may deny, suspend, or revoke a
 22 registration for a violation of this act or rules ~~adopted~~
 23 **PROMULGATED** under this act. Enforcement actions include, but are
 24 not limited to, the following:

25 (a) Written warning.

26 (b) Conference with the director.

27 (c) Suspension of the registration.

1 (d) Revocation of the registration.

2 (8) ~~(7)~~—Before the suspension or revocation of a registration,
3 the director shall notify the registrant in writing stating the
4 reasons for the registration being subject to suspension or
5 revocation and advising that the registration shall be suspended or
6 revoked 15 days after the sending of the notice unless the
7 registrant files a request for a hearing with the department within
8 that 15-day period. If a written request for a hearing is not filed
9 within the 15-day period, the department shall suspend or revoke
10 the registration.

11 (9) ~~(8)~~—A notice under subsection ~~(7)~~—(8) is considered
12 properly served when it is personally delivered to the registrant
13 or when it is sent by registered or certified mail, return receipt
14 requested, to the registrant's last known address.

15 (10) ~~(9)~~—Except as otherwise provided for in this act, the
16 director may initiate **AN** enforcement action against a registered
17 ~~service person~~ **SERVICEPERSON** or registered service agency for any
18 or all of the following:

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

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

1 (C) ~~(b)~~—The return to commercial use of a device tagged "not
2 sealed".

3 (D) ~~(e)~~—Placing a device in service with improper or
4 insufficient standards.

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

6 (F) ~~(e)~~—Placing in service or allowing to remain in service,
7 without notifying the director, an incorrect weighing or measuring
8 device. ~~Within 5 business days after a device is restored to~~
9 ~~service or placed in service, the original of a properly executed~~
10 ~~placed in service report, together with any official rejection tag~~
11 ~~removed from the device, shall be mailed to the director.~~

12 **(G) FAILURE TO PROVIDE PLACED-IN-SERVICE REPORTS OR OTHER**
13 **DOCUMENTATION AS REQUIRED BY THIS SECTION.**

14 Enacting section 1. This amendatory act does not take effect
15 unless Senate Bill No.____ or House Bill No.____ (request no.
16 05127'12) of the 96th Legislature is enacted into law.