

HOUSE BILL No. 5596

May 3, 2012, Introduced by Reps. Daley, Brunner, Rendon, Jenkins, Graves, Kurtz, Damrow, Johnson, McBroom, Outman, Muxlow, Goike, LaFontaine, Glardon, Tyler, Heise, 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 10a, 10b, 28c, 28d, 29, 31, and 31a (MCL
290.610a, 290.610b, 290.628c, 290.628d, 290.629, 290.631, and
290.631a), sections 10a and 10b as amended and section 31a as added
by 2002 PA 208, section 28c as amended by 2008 PA 351, section 28d
as added by 2008 PA 345, section 29 as amended by 1986 PA 194, and
section 31 as amended by 2006 PA 125, and by adding section 28e.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 10a. (1) A fee shall not be charged for the regular
2 inspection of any weights and measures or commodity subject to this
3 act. A fee shall be charged to the owner or responsible party of
4 any weights and measures or commodity subject to this act under
5 either of the following circumstances:

6 (a) The inspection is a reinspection of any weights and

1 measures or a lot sample of a commodity subject to this act that
2 has been tested and found incorrect.

3 (b) The inspection is performed at the request of the owner or
4 responsible party.

5 (2) The ~~department~~**DIRECTOR** shall ~~fix~~**ESTABLISH** the fees and
6 expenses for special services, including, **BUT NOT LIMITED TO**, fees
7 for voluntary registration and type evaluation. Money collected by
8 the department for special services, fees, and ~~penalties~~**CIVIL**
9 **FINES** shall be paid into the general fund and credited to the
10 department ~~of agriculture~~ for weights and measures programs.

11 Sec. 10b. (1) The department may annually adjust the schedule
12 of fees for reinspections, voluntary registrations, type
13 evaluations, special weights and measures inspections, and other
14 special services requested of the department to provide that each
15 category of fee charged is sufficient to cover the cost of the
16 activities and that the aggregate of fees collected is sufficient
17 to pay for all salaries and other expenses connected with the
18 activities described in this subsection.

19 (2) ~~An~~**EXCEPT AS OTHERWISE PROVIDED BY LAW, AN** owner or
20 operator of weights and measures that are assessed an
21 administrative fine, civil fine, or a fee as described in this
22 section or section 10a, or any combination of administrative fine,
23 civil fine, or fee, who does not pay the administrative fine, civil
24 fine, or fee within 60 days after written notice of the assessment
25 is sent may be subject to a stop use order, issued by the director,
26 for those weights and measures.

27 Sec. 28c. (1) Except as otherwise provided for in this

1 subsection, the method of sale of a commodity sold in Michigan
2 shall conform to the "uniform regulation for the method of sale of
3 commodities" published in the ~~2002~~**2012** edition of the NIST
4 handbook 130, **WHICH IS** incorporated by reference, except as
5 otherwise provided in this section or where modified by rule.
6 Section 2.20.1 of the uniform regulation for the method of sale of
7 commodities is not adopted. ~~The method of sale for liquefied~~
8 ~~petroleum gas sold in Michigan is excluded from conforming to the~~
9 ~~"uniform regulation for the method of sale of commodities"~~
10 ~~published in the 2002 edition of the NIST handbook 130.~~ The buying
11 and selling of liquefied petroleum gas may **ALSO** be conducted by the
12 ~~pound, gallon, metered cubic foot, or A flat rate price, with IF~~
13 the price rate **IS** clearly published and documented. ~~Upon request by~~
14 ~~a customer, a retailer must disclose~~ **AND CONSPICUOUSLY POSTED FOR**
15 **POTENTIAL CUSTOMER VIEWING AND CONTAINS** the actual pounds, gallons,
16 or metered cubic feet included in the flat rate price. The
17 requirements of this subsection apply only to tanks of 100 pounds
18 or less.

19 (2) The packaging and labeling requirements for commodities
20 sold in Michigan shall conform to the "uniform packaging and
21 labeling regulation" published in the ~~2002~~**2012** edition of the NIST
22 handbook 130, **WHICH IS** incorporated by reference, except for
23 section 13 of that publication or except as otherwise modified by
24 rule.

25 (3) A certificate of conformance for a type shall comply with
26 the requirements of NCWM publication 14, "national type evaluation
27 program technical policy, checklists and test procedures" and the

1 2002–2012 edition of the NIST handbook 44, "specifications,
2 tolerances, and other technical requirements for weighing and
3 measuring devices", **WHICH IS** incorporated by reference.

4 (4) The determination for a uniform basis conformance for a
5 type shall comply with NCWM publication 14, "national type
6 evaluation program technical policy, checklists and test
7 procedures" and the 2002–2012 edition of the NIST handbook 44,
8 "specifications, tolerances, and other technical requirements for
9 weighing and measuring devices", **WHICH IS** incorporated by
10 reference.

11 (5) The specifications, tolerances, and regulations for
12 commercial weights and measures shall be in compliance with the
13 standards contained in the 2002–2012 edition of the NIST handbook
14 44, **WHICH IS** incorporated by reference.

15 (6) Registration for ~~service persons~~ **SERVICEPERSONS** and
16 service agencies and competency tests shall be in compliance with
17 the standards contained in the 2002–2012 edition of the NIST
18 handbook 130, "uniform regulation for the voluntary registration of
19 ~~service persons~~ **SERVICEPERSONS** and service agencies for commercial
20 weighing and measuring devices", **WHICH IS** incorporated by
21 reference, and the **2012 EDITION OF THE** NIST handbook 44, **WHICH IS**
22 incorporated by reference.

23 (7) **FOR PURPOSES OF IMPLEMENTING THE 2012 EDITION OF THE NIST**
24 **HANDBOOK 44 AND THE 2012 EDITION OF THE NIST HANDBOOK 130, "TON"**
25 **MEANS A NET WEIGHT OF 2000 POUNDS AVOIRDUPOIS.**

26 Sec. 28d. (1) Notwithstanding any requirements adopted under
27 section 28c, the gross weight of a vehicle shall be determined by

1 weighing the vehicle in a single measurement for a vehicle that is
2 not a tractor-trailer combination and not by adding the results of
3 multiple measurements taken at opposite ends of the vehicle. The
4 gross weight of any tractor-trailer combination shall be determined
5 by the method described in subsection (2).

6 (2) The gross weight combination of a truck tractor with
7 multiple trailers ~~shall~~ **MAY** be determined without uncoupling and by
8 using a method of split weighing and combining the measurements, if
9 necessary, ~~under~~ **IF** the following conditions **ARE MET**:

10 (a) The brakes on the tractor and trailers shall be released.

11 (b) There shall be no tension on the draw bar.

12 (c) The approaches to the scale shall be straight and on the
13 same level as the scale.

14 (d) The approaches to the scale shall be of sufficient width
15 and length to ensure level positioning of the coupled vehicles
16 during weighing.

17 (3) A scale used to weigh vehicles under subsection (2) shall
18 be tested at least ~~annually~~ **SEMIANNUALLY OR UPON REPAIR OR**
19 **MAINTENANCE OF THE WEIGHTS AND MEASURES DEVICE**, by weighing a
20 coupled tractor with multiple trailers as a single unit and
21 comparing that weight with the combined weight of each vehicle
22 weighed separately. If the weights determined by this method vary
23 by more than 0.2%, the scale shall not be used to determine the
24 gross weight of vehicles while they are coupled until the scales
25 are corrected to properly measure within the 0.2% range. **ALL TESTING**
26 **DATA SHALL BE RECORDED AND THE RECORDS RETAINED ON SITE AND MADE**
27 **AVAILABLE TO THE DEPARTMENT FOR REVIEW UPON REQUEST.**

(4) If a scale cannot be used to weigh vehicles under subsection (2) while they are coupled, the vehicles shall be weighed individually and the weights totaled to obtain the gross weight of the vehicle combination.

(5) This section does not apply to the enforcement of vehicle weight under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923.

SEC. 28E. BEGINNING 1 YEAR AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION, IF MOTOR FUEL IS SOLD AT A ROADSIDE RETAIL LOCATION, THE ADVERTISING SHALL COMPLY WITH ALL OF THE FOLLOWING:

(A) THE PRICE ADVERTISED SHALL BE CLEARLY AND COMPLETELY POSTED IN FULL, INCLUDING ANY FRACTIONAL PRICES, TO THE TENTH OF A CENT.

(B) THE PRICE ADVERTISED SHALL INCLUDE THE GRADE OF FUEL BEING SOLD, WITH THE FOLLOWING ABBREVIATIONS ALLOWED:

(i) REGULAR GASOLINE: "REGULAR", "REG.", OR "REG,".

(ii) MIDGRADE GASOLINE: "MIDGRADE", "MID.", OR "MID,".

(iii) PREMIUM GASOLINE: "PREMIUM", "PREM.", OR "PREM,".

(iv) DIESEL FUEL: "DIESEL", "DSL.", OR "DSL,".

(v) KEROSENE FUEL: "KEROSENE", "KER.", OR "KER,".

(C) ALL PRICES SHALL BE DISPLAYED AT THE PUMP, BUT ONLY THE UNIT PRICE OF THE SELECTED PRODUCT SHALL BE DISPLAYED DURING THE TRANSACTION. ALL INDICATIONS ON THE PUMP DISPLAY SHALL CALCULATE THE CORRECT TOTAL PRICE OF THE PURCHASE.

(D) IF THE ADVERTISED PRICE OF THE MOTOR FUEL IS SUBJECT TO 1 OR MORE CONDITIONS FOR SALE AT THAT PRICE, THE RETAILER SHALL POST

1 THE CONDITIONS IMMEDIATELY NEXT TO THE SALES PRICE WITH EQUAL
2 ILLUMINATION IN LETTERING OF THE SAME STYLE AND OF AT LEAST 1/2 THE
3 SIZE THAT IS USED TO POST THE SALE PRICE.

4 (E) IF THE UNIT PRICE FOR THE SAME GRADE OF MOTOR FUEL
5 DIFFERS, ALL PRICES SHALL BE DISPLAYED IN LETTERING OF THE SAME
6 STYLE AND SIZE.

7 Sec. 29. (1) Any person who assaults or inflicts a bodily
8 injury upon, the director, an authorized representative of the
9 director, the deputy director, any inspector, or a sealer or deputy
10 sealer in the performance of his or her official duties ~~shall be~~
11 **UNDER THIS ACT IS** guilty of a misdemeanor punishable by a fine of
12 not more than ~~\$5,000.00, \$10,000.00~~ or imprisonment for not more
13 than 2 years, or both.

14 (2) Any person who hinders or obstructs in any way the
15 director, an authorized representative of the director, the deputy
16 director, any inspector, or a sealer or deputy sealer in the
17 performance of his or her official duties ~~shall be~~ **UNDER THIS ACT**
18 **IS** guilty of a misdemeanor punishable by a fine of not more than
19 ~~\$1,000.00, \$5,000.00~~ or imprisonment for not more than 1 year, or
20 both.

21 Sec. 31. (1) A person who, by himself or herself or by the
22 person's servant or agent, or as the servant or agent of another
23 person, engages in any of the following acts is guilty of a
24 misdemeanor and may be fined not less than \$1,000.00 or not more
25 than \$10,000.00, ~~or imprisoned for~~ **PLUS THE AMOUNT OF ANY ECONOMIC**
26 **BENEFIT REALIZED AS A RESULT OF THE VIOLATION, OR IMPRISONMENT FOR**
27 not more than 1 year, or both:

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

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

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

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

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

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

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

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

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

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

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

15 (i) Violate a provision of this act or of ~~the~~ **A** rule
16 promulgated under this act for which a specific penalty has not
17 been prescribed.

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

1 exchange of gasoline or any middle distillate petroleum product
2 among petroleum refiners.

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

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

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

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

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

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

8 (c) Violates ~~a prohibited act as listed in this~~ section within
9 24 months after 2 previous violations of this section that resulted
10 in convictions.

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

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

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

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

25 (c) ~~If the violation is~~ **FOR** a third violation ~~or a violation~~
26 ~~subsequent to the third~~ **OR SUBSEQUENT** violation, ~~the owner is~~
27 ~~responsible for~~ a civil fine of \$25,000.00.

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

4 (7) The department shall inspect motor fuel facilities with 3
5 or more violations under subsection (5) at least annually, **AND ALL**
6 **INSPECTION COSTS SHALL BE ASSESSED TO THE OWNER OF THE WEIGHTS AND**
7 **MEASURES ESTABLISHMENT FOR A PERIOD OF NOT MORE THAN 2 YEARS.**

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

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

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

18 Sec. 31a. (1) The director, upon determination that a person
19 who, by himself or herself, his or her agent or employee, or as the
20 agent or employee of another, has violated this act or rules
21 promulgated under this act, may enter into a consent agreement for
22 the assessment of a civil fine as follows:

23 (a) For a first violation, not less than ~~\$50.00~~ **\$150.00** and
24 not more than ~~\$1,000.00~~ **\$2,500.00** plus the **ACTUAL COST OF THE**
25 **INVESTIGATION AND THE** amount of any economic benefit associated
26 with the violation.

27 (b) For a second violation within 2 years of the first

1 violation, not less than ~~\$100.00~~ **\$500.00** or not more than \$5,000.00
2 plus actual costs of the investigation and **TWICE** the amount of any
3 economic benefit associated with the violation.

4 (c) For a third violation within 2 years from the date of the
5 first violation, not less than \$500.00 or not more than \$10,000.00
6 plus actual costs of the investigation and **3 TIMES** the amount of
7 any economic benefit associated with the violation.

8 (2) If a person alleged to have violated this act or rules
9 promulgated under this act does not enter into a written consent
10 agreement as described in subsection (1) **WITHIN 15 DAYS OF THE DATE**
11 **OF THE CONSENT AGREEMENT**, the director may do either of the
12 following:

13 (a) ~~Initiate~~ **REQUEST THE ATTORNEY GENERAL TO INITIATE** a
14 criminal prosecution.

15 (b) Commence an administrative hearing conducted pursuant to
16 the administrative procedures act of 1969, 1969 PA 306, MCL 24.201
17 to 24.328, in the case of a person holding a registration under
18 this act, or commence a civil violation proceeding in a court of
19 competent jurisdiction regarding any other person.

20 (3) Upon finding a violation of any provision of this act or
21 rules promulgated under this act as a result of the commencement of
22 an action under subsection (2)(b), the director shall assess an
23 administrative fine or a civil fine of not more than \$10,000.00
24 plus actual costs of the investigation ~~and~~ **PLUS** the amount of any
25 economic benefit associated with the violation **AS PRESCRIBED IN**
26 **SUBSECTION (1).**

27 (4) The decision of the director pursuant to a proceeding

1 under this section is subject to appropriate judicial review as
2 provided by law.

3 (5) The director shall advise the attorney general of the
4 failure of any person to pay an administrative fine or civil fine
5 imposed under this section. The attorney general shall bring an
6 action in a court of competent jurisdiction to recover the fine.

7 (6) Any civil fines or recovery of any economic benefits
8 ~~associated with~~ **THAT ARE RECOVERED FOR** a violation of this act and
9 collected under this section shall be paid to the general fund and
10 credited to the department for the enforcement of this act.

11 Enacting section 1. This amendatory act does not take effect
12 unless Senate Bill No. _____ or House Bill No. 5595(request no.
13 05051'12) of the 96th Legislature is enacted into law.