

Act No. 253
Public Acts of 2012
Approved by the Governor
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**STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 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

ENROLLED HOUSE BILL No. 5595

AN ACT to amend 1964 PA 283, entitled "An act to regulate and provide standards for weights and measures, and the packaging and advertising of certain commodities; to provide for a state director and other officials and to prescribe their powers and duties; to provide a fee system for certain inspections and tests; to provide penalties for fraud and deception in the use of false weights and measures and other violations; and to repeal certain acts and parts of acts," 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:

Sec. 2. As used in this act:

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

(b) "Certificate of conformance" means a document issued by the NCWM based on testing by a participating laboratory that constitutes evidence of conformance of a type.

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

(d) "Commercial weighing and measuring device" means any weights and measures or weighing and measuring device, including any accessory attached to or used in connection with the weighing or measuring device that is designed or installed in a manner that its operation affects or may affect the accuracy of the device, used or employed in commerce for any of the following:

(i) Establishing the size, quantity, extent, area, or measurement of any commodity sold, offered, or submitted for hire.

(ii) Computing any basic charge or payment for services rendered on the basis of weight, measure, or count.

(iii) Establishing eligibility for any award.

(e) "Consumer package" means a package that is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption or use by individuals for the purposes of personal care or in performance of services ordinarily rendered in or about the household or in connection with personal possessions.

(f) "Department" means the department of agriculture and rural development.

- (g) "Director" means the director of the department or his or her designee.
- (h) "Inspector" means an employee or agent of the department authorized to enforce this act.
- (i) "NCWM" means the national conference on weights and measures, inc.
- (j) "Net weight" means the weight of a commodity excluding any materials, substances, or items not considered to be part of the commodity. Materials, substances, or items not considered to be part of the commodity include containers, conveyances, bags, wrappers, packaging materials, labels, individual piece coverings, decorative accompaniments, prizes, coupons, and, in the case of edible commodities, anything that is nonedible.
- (k) "NIST" means the United States department of commerce, national institute of standards and technology.
- (l) "NTEP" means the national type evaluation program administered by the NCWM, in cooperation with the states, the private sector, and the NIST for determining on a uniform basis conformance of a type.
- (m) "Nonconsumer package" means a package other than a consumer package and includes, but is not limited to, a package intended solely for industrial or institutional use or for 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) "Placed-in-service report" means the approved form issued to registered servicepersons and registered service agencies for their use in accordance with the requirements of section 9b.
- (q) "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) "Registered serviceperson" means an individual who installs, services, repairs, or reconditions commercial weights and measures and who holds a registration issued by the director.
- (s) "Rule" means an administrative rule promulgated pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.
- (t) "Sell" or "sale" means sale, barter, or exchange.
- (u) "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.
- (v) "Type evaluation" means the testing, examination, and evaluation of a type by a participating laboratory under the NTEP.
- (w) "Weight", in connection with any commodity or service, means net weight.
- (x) "Weights and measures" means weights and measures of every kind, instruments and devices for weighing and measuring, grain moisture meters, and any appliances and accessories associated with any or all of those instruments and devices. Weights and measures include automatic checkout systems. Weights and measures do not include meters for the measurement of electricity, natural or manufactured gas, water, or the usage of communications services when any of these meters are regulated and tested as part of a public utilities system.
- (y) "Weighing and measuring device" means all instruments and devices of every kind used to determine the quantity of any commodity and includes weights and measures and any appliance and accessories associated with any of these instruments and devices, except meters, appliances, and accessories that are part of a public utility regulated by the Michigan public service commission.
- (z) "Weighing and measuring establishment" means a location with 1 or more commercial weighing and measuring devices or any operation that employs commercial weighing and measuring devices that are mobile.

Sec. 3. The system of weights and measures in customary use in the United States and the metric system of weights and measures are jointly recognized, and one or the other of these systems or both shall be used, for all commercial purposes in this state. The definitions of basic units of weight and measure, the tables of weight and measure, and weights and measures equivalents, as published by the NIST, are recognized and shall govern weighing and measuring equipment and transactions in this state.

Sec. 4. The state reference standards shall be maintained traceable to the international system of units through calibrations by a national metrology institute and shall be kept in a safe and suitable place in the weights and measures laboratory of the department and shall be maintained as recommended by the NIST handbook 143, which is incorporated by reference, unless otherwise noted. The state primary standards shall not be removed from the weights and measures laboratory except for repairs or certification. The state primary standards shall be used only to verify the secondary standards and for scientific purposes.

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

Sec. 6. The director by virtue of his or her office shall be state director of weights and measures during his or her term of office. His or her deputy shall be deputy director of weights and measures, and all inspectors appointed by the director shall be state inspectors and sealers of weights and measures.

Sec. 9a. (1) A weighing device placed in service after January 1, 1988 shall have valid certificates of conformance before use for commercial or law enforcement purposes. However, a non-NTEP measuring device for special use may be used for products for which an NTEP measuring device is not readily available, if all of the following conditions are met:

- (a) The device owner receives written approval from the director.
- (b) The device is tested on an annual basis by a registered service agency.
- (c) The registered service agency records all testing data and the records are retained on site and made available to the department upon request.

(2) A measuring device placed in service on or after October 29, 2002, shall have valid certificates of conformance before use for commercial or law enforcement purposes. However, a non-NTEP measuring device for special use may be used for products for which an NTEP measuring device is not readily available, if all of the following conditions are met:

- (a) The device owner receives written approval from the director.
- (b) The device is tested on an annual basis by a registered service agency.
- (c) The registered service agency records all testing data and the records are retained on site and made available to the department 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 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 serviceperson or service agency in specific competency areas. Competence in a subject matter area may be demonstrated by scoring at least 80% on a department-approved competency test for that area in compliance with the standards described in section 28c. 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 issuance. A registration may be transferred to a different registered service agency if the registration is retained by the original serviceperson and the new service agency pays the service agency registration fee.

(4) The fee for registration under this section shall be established in accordance with section 10b(1).

(5) Certification of standards used by the registered serviceperson or registered service agency shall be accomplished by the registrant at least biennially. The certification of standards may be done at any approved laboratory. The registrant shall submit documentation of international standards traceable calibration reports with the registration or renewal application.

(6) Within 5 business days after a device is returned to service or placed in service, the original of a properly executed placed-in-service report, together with any official department rejection tag removed from the device, shall be mailed to the director at an address indicated on the tag.

(7) The director may deny, suspend, or revoke a registration for a violation of this act or rules promulgated under this act. Enforcement actions include, but are not limited to, the following:

- (a) Written warning.
- (b) Conference with the director.
- (c) Suspension of the registration.
- (d) Revocation of the registration.

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

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

(10) Except as otherwise provided for in this act, the director may initiate an enforcement action against a registered serviceperson or registered service agency for any or all of the following:

(a) Failure of a weighing or measuring device during an official inspection within 30 days after being placed in service following an initial installation.

(b) Failure of a weighing or measuring device during an official inspection within 30 days 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.

(c) The return to commercial use of a device tagged "not sealed".

(d) Placing a device in service with improper or insufficient standards.

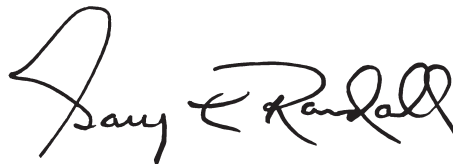
(e) Falsifying a placed-in-service report or test report.

(f) Placing in service or allowing to remain in service, without notifying the director, an incorrect weighing or measuring device.

(g) Failure to provide placed-in-service reports or other documentation as required by this section.

Enacting section 1. This amendatory act does not take effect unless House Bill No. 5596 of the 96th Legislature is enacted into law.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

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Governor