

Act No. 254  
Public Acts of 2012  
Approved by the Governor  
June 26, 2012  
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July 2, 2012  
EFFECTIVE DATE: July 2, 2012

**STATE OF MICHIGAN  
96TH LEGISLATURE  
REGULAR SESSION OF 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**

# **ENROLLED HOUSE BILL No. 5596**

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 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:*

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

(a) The inspection is a reinspection of any weights and measures or a lot sample of a commodity subject to this act that has been tested and found incorrect.

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

(2) The director shall establish the fees and expenses for special services, including fees for voluntary registration and type evaluation. Money collected by the department for special services, fees, and civil fines shall be paid into the general fund and credited to the department for weights and measures programs.

Sec. 10b. (1) The department may annually 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 that the aggregate of fees collected is sufficient to pay for all salaries and other expenses connected with the activities described in this subsection.

(2) Except as otherwise provided by law, an owner or operator of weights and measures that are assessed an administrative fine, civil fine, or a fee as described in this section or section 10a, or any combination of administrative fine, civil fine, or fee, who does not pay the administrative fine, civil fine, or fee within 60 days after written notice of the assessment is sent may be subject to a stop use order, issued by the director, for those weights and measures.

Sec. 28c. (1) Except as otherwise provided for in this subsection, the method of sale of a commodity sold in Michigan shall conform to the "uniform regulation for the method of sale of commodities" published in the 2012 edition of the

NIST handbook 130, which is incorporated by reference, except as otherwise provided in this section or where modified by rule. Section 2.20.1 of the uniform regulation for the method of sale of commodities is not adopted. The buying and selling of liquefied petroleum gas may also be conducted by a flat rate price, if the price rate is clearly and conspicuously posted for potential customer viewing. The requirements of this subsection apply only to tanks of 100 pounds or less.

(2) The packaging and labeling requirements for commodities sold in Michigan shall conform to the “uniform packaging and labeling regulation” published in the 2012 edition of the NIST handbook 130, which is incorporated by reference, except for section 13 of that publication or except as otherwise modified by rule.

(3) A certificate of conformance for a type shall comply with the requirements of NCWM publication 14, “national type evaluation program technical policy, checklists and test procedures” and the 2012 edition of the NIST handbook 44, “specifications, tolerances, and other technical requirements for weighing and measuring devices”, which is incorporated by reference.

(4) The determination for a uniform basis conformance for a type shall comply with NCWM publication 14, “national type evaluation program technical policy, checklists and test procedures” and the 2012 edition of the NIST handbook 44, “specifications, tolerances, and other technical requirements for weighing and measuring devices”, which is incorporated by reference.

(5) The specifications, tolerances, and regulations for commercial weights and measures shall be in compliance with the standards contained in the 2012 edition of the NIST handbook 44, which is incorporated by reference.

(6) Registration for servicepersons and service agencies and competency tests shall be in compliance with the standards contained in the 2012 edition of the NIST handbook 130, “uniform regulation for the voluntary registration of servicepersons and service agencies for commercial weighing and measuring devices”, which is incorporated by reference, and the 2012 edition of the NIST handbook 44, which is incorporated by reference.

(7) For purposes of implementing the 2012 edition of the NIST handbook 44 and the 2012 edition of the NIST handbook 130, “ton” means a weight of 2,000 pounds avoirdupois and “gross ton” means a weight of 2,240 pounds avoirdupois.

Sec. 28d. (1) Notwithstanding any requirements adopted under section 28c, the gross weight of a vehicle shall be determined by weighing the vehicle in a single measurement for a vehicle that is not a tractor-trailer combination and not by adding the results of multiple measurements taken at opposite ends of the vehicle. The gross weight of any tractor-trailer combination shall be determined by the method described in subsection (2).

(2) The gross weight combination of a truck tractor with multiple trailers shall be determined without uncoupling and by using a method of split weighing and combining the measurements, if necessary, if the following conditions are met:

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

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

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

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

(3) A scale used to weigh vehicles under subsection (2) shall be tested at least annually or upon repair or maintenance of the weights and measures device, by weighing a coupled tractor with multiple trailers as a single unit and comparing that weight with the combined weight of each vehicle weighed separately. If the weights determined by this method vary by more than 0.2%, the scale shall not be used to determine the gross weight of vehicles while they are coupled until the scales are corrected to properly measure within the 0.2% range. All testing data shall be recorded and the records retained on site by the owner or operator and made 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."
- (vi) E85 fuel ethanol: "E85".

(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 the conditions immediately next to the sales price with equal illumination in lettering of the same style and of at least 1/2 the size that is used to post the sale price.

(e) If the unit price for the same grade of motor fuel differs, all prices shall be displayed in lettering of the same style and size.

Sec. 29. (1) Any person who assaults or inflicts a bodily injury upon, the 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 under this act is guilty of a misdemeanor punishable by a fine of not more than \$10,000.00 or imprisonment for not more than 2 years, or both.

(2) Any person who hinders or obstructs in any way the 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 under this act is guilty of a misdemeanor punishable by a fine of not more than \$5,000.00 or imprisonment for not more than 1 year, or both.

Sec. 31. (1) A person who, by himself or herself or by the person's servant or agent, or as the servant or agent of another person, engages in any of the following acts is guilty of a misdemeanor and may be fined not less than \$1,000.00 or not more than \$10,000.00, plus the amount of any economic benefit realized as a result of the violation, or imprisonment for not more than 1 year, or both:

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

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

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

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

(iii) The weights and measures have been exempted from sealing or testing requirements by section 10 or by rule of the director promulgated under section 8.

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

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

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

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

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

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

(i) Violate a provision of this act or of a rule promulgated under this act for which a specific penalty has not been prescribed.

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

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

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

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

(3) A person who, by himself or herself or by the person's servant or agent, or as a servant or agent of another person, performs any of the following acts is guilty of a felony punishable by a fine of not less than \$5,000.00 or more than \$20,000.00, by a fine of not more than twice the amount of any money gained for each day on which a violation has been found, by imprisonment for not more than 5 years, or by any combination of these penalties:

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

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

(c) Violates this section within 24 months after 2 previous violations of this section that resulted in convictions.

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

(5) In addition to any other applicable penalties prescribed in this act, the department 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:

(a) For a first violation, a civil fine of \$5,000.00.

(b) For a second violation, a civil fine of \$10,000.00.

(c) For a third or subsequent violation, a civil fine of \$25,000.00.

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

(7) The department shall inspect motor fuel facilities with 3 or more violations under subsection (5) at least annually, and all inspection costs shall be assessed to the owner of the weights and measures establishment for a period of not more than 2 years.

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

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

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

(a) For a first violation, not less than \$150.00 and not more than \$2,500.00 plus the actual cost of the investigation and the amount of any economic benefit associated with the violation.

(b) For a second violation within 2 years of the first violation, not less than \$500.00 or not more than \$5,000.00 plus actual costs of the investigation and twice the amount of any economic benefit associated with the violation.

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

(2) If a person alleged to have violated this act or rules promulgated under this act does not enter into a written consent agreement as described in subsection (1) within 15 days of the date of the consent agreement, the director may do either of the following:

(a) Initiate a criminal prosecution.

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

(3) Upon finding a violation of any provision of this act or rules promulgated under this act as a result of the commencement of an action under subsection (2)(b), the director shall assess an administrative fine or a civil fine of not

more than \$10,000.00 plus actual costs of the investigation plus the amount of any economic benefit associated with the violation as prescribed in subsection (1).

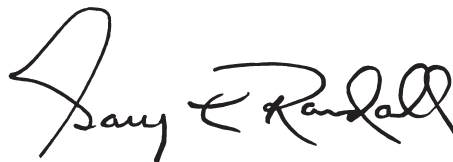
(4) The decision of the director pursuant to a proceeding under this section is subject to appropriate judicial review as provided by law.

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

(6) Any civil fines or recovery of any economic benefits that are recovered for a violation of this act and collected under this section shall be paid to the general fund and credited to the department for the enforcement of this act.

Enacting section 1. This amendatory act does not take effect unless House Bill No. 5595 of the 96th Legislature is enacted into law.

This act is ordered to take immediate effect.



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Clerk of the House of Representatives



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Secretary of the Senate

Approved .....

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Governor