



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL



ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 685 (Substitute S-1 as reported)
Sponsor: Senator Darwin L. Boohar
Committee: Agriculture

(Senate-passed version)

Date Completed: 2-20-14

RATIONALE

The Weights and Measures Act governs the standards for weighing or measuring commodities for sale in Michigan, as well as labeling weights and measures. A section of the Act relies on standards developed by the National Institute of Standards and Technology (NIST). Rather than codify the standards that are to be used, Michigan adopts the NIST standards by reference to the NIST Handbooks. To adopt new standards, the State incorporates the specific edition and regulation, law, or the entire handbook by reference in the statute.

Concerns have been raised about the lack of labeling standards for bulk oil containers used to service oil change customers, and the lack of information presented on invoices, receipts, or other documentation for the sale of oil by suppliers/wholesalers and retail oil service providers. The Act vests regulatory enforcement power in the Department of Agriculture and Rural Development, which may investigate violations of the Act on a complaint-basis. Currently, the Act's labeling requirements supply the means for correcting any issues with motor vehicle oil suppliers and service providers. If a customer is able to show that he or she was sold oil that was improperly labeled, the Department can act. Beyond issues with improper labeling, there is currently no statutory basis to investigate complaints relating to the improper quality of oil.

To address these concerns, and to update the State's standards for the Weights and Measures Act, it has been suggested that the statutory references to the NIST Handbooks should be revised.

CONTENT

The bill would amend the Weights and Measures Act to incorporate by reference the standards published in the 2014 editions of NIST Handbooks, replacing references to the 2012 standards.

The bill would refer to the standards included in the 2014 edition of NIST Handbook 130 for "Uniform Regulation for the Method of Sale of Commodities". (These changes would affect the information provided to motor oil customers, as described below.)

The bill also would incorporate the standards published in the 2014 edition of Handbook 130 for "Uniform Packaging and Labeling Regulation", and "Uniform Regulation for the Voluntary Registration of Servicepersons and Service Agencies for Commercial Weighing and Measuring Devices", as well as Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices".

MCL 290.628c

BACKGROUND

NIST Handbooks

The U.S. Constitution grants Congress the power to "fix the Standard of Weights and Measures". The National Institute of Science and Technology is a Federal agency that works with a number of industries to develop measurements and standards in accordance with that power. To aid industry and regulators in keeping abreast of the latest standards, NIST publishes a series of handbooks. These handbooks compile the best practices, uniform laws and regulations, and other useful information for a number of fields. The standards are reviewed annually and a new edition of the handbooks is printed each year with the revised standards. At least 20 states and territories adopt the new "Uniform Regulation for the Method of Sale of Commodities" every year, and at least 45 states and territories have adopted some edition of these regulations. Adoption of other regulations and handbooks varies by state and year. Prior to 2012, Michigan last updated the references to these standards in 2002.

2014 Motor Oil Requirements

The 2014 edition of NIST Handbook 130 for "Uniform Regulation for the Method of Sale of Commodities" requires a service provider to give a customer purchasing motor oil a receipt or invoice with the following information:

- The brand name of the motor oil.
- The SAE viscosity grade of the oil.
- Obsolete Service category warnings.
- Engine Oil Service category warnings.

For motor oil sold in bulk, the regulation requires additional information, including:

- The quantity of oil.
- The date and time of the sale.
- The name and address of the seller and buyer.
- The intended use.

A service provider also is required to label bulk containers or storage tanks used in the installation of oil with the following information:

- The brand name of the motor oil.
- The SAE viscosity grade.
- The intended use.
- Obsolete Service category warnings.
- Engine Oil Service category warnings.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

According to the Michigan Petroleum Association and the Michigan Oil Change Association, 20% of the customers who go to a service provider for an oil change do not get the quality or type of oil that they request. While this is sometimes the result of an oversight, often the improper oil is sold intentionally for financial gain. The use of incorrect oil in an engine can cause a number of problems including engine trouble and reduced engine lifespan, and will void most automobile warranties. This is cause for concern, as many consumers go to oil change stations and purchase from people and businesses that they trust. As the law stands now, the Department has few avenues it can pursue to crack down on businesses and individuals who supply or install the incorrect oil. Bad actors, when confronted by a customer who complains that improper oil was sold, can claim that the oil sold to the customer was the oil the customer wanted.

By implementing the new standards, the bill would ensure that documentation was created and would give the Department the statutory tools and evidence necessary to investigate businesses or individuals who misrepresent the oil they supply or install. As the Department enforced the new standards, the incidence of bad actors would decrease. Finally, none of these standards are particularly burdensome; they should be relatively easy to follow, and would not be used to certify bulk storage containers or service providers.

Opposing Argument

The bill would require personnel and resources that the Department does not currently have. The Department anticipates that the volume of complaints for failure to follow the new guidelines would be fairly high for the first year before decreasing. The Department would need to hire an additional qualified person to handle the increased volume of complaints, in addition to carrying out its other weights and measures responsibilities. Furthermore, the Department would need new equipment to conduct the type of testing necessary for investigating complaints based on improper oil. In addition, a vehicle could be required (along with insurance, fuel, and maintenance) for transportation to investigation sites from the laboratory. The bill would provide no method of funding any of these needs.

Legislative Analyst: Jeff Mann

FISCAL IMPACT

The shift of standards of regulation by the Michigan Department of Agriculture and Rural Development (MDARD) from what is required under the 2012 edition of the NIST handbooks to the 2014 edition, as provided under the bill, would result in increased responsibilities for the Department along with accompanying increased costs. Currently, under the 2012 standards, MDARD is not required to regulate or otherwise respond to complaints concerning the quantity or quality of oil used at businesses engaged in vehicle oil change services. Under the published 2014 standards, MDARD would be given the authority to regulate these operations.

According to MDARD's estimate, should it adopt a regulatory program that would consist solely of the Department's responding to complaints related to the quantity or quality of oil at these facilities, the Department would require \$120,000 in additional funding for personnel, \$40,000 for vehicle and travel costs, and \$30,000 for lab testing costs, for a total of \$190,000 annually. The source of the funding for whatever regulatory efforts MDARD undertook to fulfill its regulatory requirements under the 2014 standards is not known at this time but, potentially, the needed funds could come from General Fund dollars or possibly from the potential establishment of license/inspection fees to be levied on oil change businesses.

Fiscal Analyst: Bruce Baker

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.