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Senate Bill 1059 (as introduced 5-6-22)
Sponsor: Senator Kevin Daley
Committee: Agriculture

Date Completed: 9-19-22

CONTENT

The bill would amend the Weights and Measures Act to do the following:

- **Replace references to NTEP [National Type Evaluation Program] measuring device or non-NTEP measuring device with references to "NTEP weighing device".**
- **Allow the Director to initiate an enforcement action against a registered serviceperson or registered service agency for failing to comply with a request for documents or other information related directly to a registration audit, among other things, and define "registration audit".**
- **Prohibit the use of the word "approximate" in connection with a weight or measure declaration for a packaged commodity.**
- **Specify that a cottage food operation would not have to include the address of the cottage food operation on a label if specified requirements under the Food Law were met.**
- **Incorporate by reference standards published in the 2022, instead of the 2014, editions of National Institute of Standards and Technology (NIST) Handbooks.**
- **Specify that the option to use pressure sensitive security tape as a security measure on a fuel pump would apply until December 31, 2023.**
- **Replace references to "person" in the Act's criminal violations and penalties provisions with references to "individual".**

NTEP Weighing Device

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 weighing device placed in service after January 1, 1988, must 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 the conditions prescribed in the Act are met. Instead of "NTEP measuring device" (or "non-NTEP measuring device"), the bill would refer to "NTEP weighing device".

Enforcement Action

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 of the violations listed in the Act. These include, for example, placing a device in service with improper or insufficient standards or falsifying a placed-in-service report or test report. Under the bill, the Director

also could initiate an enforcement action against a registered serviceperson or registered service agency for any of the following:

- Placing a device in service without having the proper certification as required by law.
- Failure to comply with a request for documents or other information related directly to a registration audit.
- Failure to submit a placed-in-service report for a weighing and measuring device found in an out-of-tolerance condition and returned to a condition as close to zero as practicable.
- Failure to properly seal a device.
- Failure to employ the use of an approved security seal that contained a unique identifying mark that was approved and was registered with MDARD.

"Registration audit" would mean an official inspection of a registered service agency's or registered serviceperson's accounts, paperwork, and offices.

"Approximate" on Packaging

Generally, under the Act any commodity in package form kept for the purpose of sale, or offered or exposed for sale, must bear on the outside of the package such definite, plain, legible, and conspicuous declarations of the identity of the commodity in the package, unless the commodity can be easily identified through the wrapper or container, and the name and place of business of the manufacturer, packer, or distributor, as applicable. The commodity in package form also must include the net quantity of the contents in terms of weight, measure, or count; however, the term "when packed" or any words of similar import, or any term quantifying a unit of weight, measure, or count, such as "jumbo", "giant", "full", or the like that tends to exaggerate the amount of commodity in the package must not be used.

In addition, generally, if a commodity in package form is advertised in any manner and the retail price of the package is stated in the advertisement, there must be closely and conspicuously associated with the statement of price a declaration of the basic quantity of contents of the package as is required by law or regulation to appear on the package. In connection with the declaration the qualifying term "when packaged" or any other words of similar import, or any term qualifying a unit of weight, measure or count, for example, "jumbo", "giant", "full", and the like that tends to exaggerate the amount of commodity in the package, must not be used.

The bill would include "approximate" in the above list of words in both provisions.

Cottage Food Operations & NIST Handbook References

Under the Act, the packaging and labeling requirements for commodities sold in the State must conform to the "Uniform Packaging and Labeling Regulation" published in the 2014 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. The bill would incorporate by reference the 2022 edition of the NIST Handbook 130 instead of the 2014 edition. Also, under the bill, a cottage food operation would not have to include the address of the cottage food operation on a label if both of the following conditions were met:

- The cottage food product was produced in accordance with Section 4102 of the Food Law.
- The cottage food operation was registered with and was issued a registration number by the Michigan State University Product Center in accordance with Section 4102(8) of the Food Law (which House Bill 5671 (H-3) would add).

The bill also would incorporate the standards published in the 2022, instead of 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". Electric vehicle fueling systems would have to comply with Section 3.40, "Electric Vehicle Fueling Systems – Tentative Code", as proposed to be adopted in the 2022 edition of the NIST Handbook 44, effective January 1, 2023.

Fuel Pump; Pressure Sensitive Security Tap

If a pump for dispensing motor fuel for sale at a roadside retail location includes a scanning device for reading a customer payment card as an integral part of the pump, the pump must include a security measure to restrict the unauthorized access of customer payment card information. The security measure must include one or more of the specified options, such as a pressure-sensitive security tape that is imprinted with a customized graphic and placed over the panel opening leading to the scanning device to restrict unauthorized opening of the panel. Under the bill, the option to use pressure sensitive security tape would apply until December 31, 2023.

Criminal Penalties & Civil Fines

The Act specifies that a person who, by himself or herself or by the person's servant or agent, or as a servant or agent of another person, engages in certain activities, or fails to perform certain activities, is guilty of a misdemeanor or felony, depending on the act or omission. The bill would replace references to "person" with "individual".

In addition, 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 the Act or rules promulgated under the Act, may enter into a consent agreement for the assessment of a civil fine as follows:

- For a first violation, at least \$150 and up to \$2,500 plus the actual cost of the investigation and the amount of any economic benefit associated with the violation.
- For a second violation within two years of the first violation, at least \$500 or not more than \$5,000 plus actual costs of the investigation and twice the amount of any economic benefit associated with the violation.
- For a third violation within two years from the date of the first violation, at least \$500 or not more than \$10,000 plus actual costs of the investigation and three times the amount of any economic benefit associated with the violation.

The bill would eliminate references to "person" and instead would refer to "individual. Also, the bill would increase the maximum fine within each tier to \$2,500 *per violation*, \$5,000 *per violation*, and \$10,000 *per violation*, respectively.

After finding a violation of any provision of the Act or rules promulgated under the Act as a result of the commencement of a civil violation or administrative hearing, the Director must assess an administrative fine or a civil fine of not more than \$10,000 plus the actual costs of the investigation plus and the amount of any economic benefit associated with the violation. The bill would refer to "court" instead of Director and would eliminate the reference to administrative fine. In addition, the maximum fine would be \$10,000 per violation, plus the associated costs and any amount of economic benefit.

MCL 290.602 et al.

Legislative Analyst: Jeff Mann

FISCAL IMPACT

The bill would have a minimal fiscal impact on MDARD, as the proposed charges to regulatory requirements and enforcement would be assumed by existing weights and measures regulation staff. This would include the proposed language that would provide for electric vehicle fueling system standards, which would require the Department to inspect commercial electric vehicle fueling systems. The costs of this new responsibility would be covered by existing gas/diesel fuel inspection teams, and the Department already possesses the necessary technical equipment to accomplish this task.

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.