

**SUBSTITUTE FOR
SENATE BILL NO. 1059**

A bill to amend 1964 PA 283, entitled
"Weights and measures act,"
by amending sections 2, 9a, 9b, 24, 27, 28c, 28e, 28f, 31, and 31a
(MCL 290.602, 290.609a, 290.609b, 290.624, 290.627, 290.628c,
290.628e, 290.628f, 290.631, and 290.631a), sections 2, 9a, and 9b
as amended by 2012 PA 253, section 28c as amended by 2016 PA 464,
section 28e as amended by 2012 PA 469, section 28f as added by 2017
PA 168, and sections 31 and 31a as amended by 2012 PA 254.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 2. As used in this act:
- 2 (a) "Automatic checkout system" means an electronic device,
- 3 computer, or machine that determines the price of a consumer item
- 4 by using a product identity code and may, but is not required to,

1 include an optical scanner.

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

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

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

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

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

23 (iii) Establishing eligibility for any award.

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

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

3 (g) "Director" means the director of the department or his or
4 her designee.

5 (h) "Inspector" means an employee or agent of the department
6 authorized to enforce this act.

7 (i) "NCWM" means the national conference on weights and
8 measures, inc.

9 (j) "Net weight" means the weight of a commodity excluding any
10 materials, substances, or items not considered to be part of the
11 commodity. Materials, substances, or items not considered to be
12 part of the commodity include containers, conveyances, bags,
13 wrappers, packaging materials, labels, individual piece coverings,
14 decorative accompaniments, prizes, coupons, and, in the case of
15 edible commodities, anything that is nonedible.

16 (k) "NIST" means the United States ~~department of commerce,~~
17 ~~national institute~~ **Department of Commerce, National Institute** of
18 ~~standards~~ **Standards** and ~~technology.~~ **Technology.**

19 (l) "NTEP" means the national type evaluation program
20 administered by the NCWM, in cooperation with the states, the
21 private sector, and the NIST for determining on a uniform basis
22 conformance of a type.

23 (m) "Nonconsumer package" means a package other than a
24 consumer package and includes, but is not limited to, a package
25 intended solely for industrial or institutional use or for
26 wholesale distribution.

27 (n) "Participating laboratory" means a state measurement
28 laboratory that ~~has been~~ **is** accredited by NCWM to conduct a type
29 evaluation under the NTEP and determined otherwise acceptable to

1 the director.

2 (o) "Person" means ~~any~~**an** individual, partnership,
3 corporation, association, governmental entity, or other legal
4 entity.

5 (p) "Placed-in-service report" means the approved form issued
6 to registered servicepersons and registered service agencies for
7 their use in accordance with the requirements of section 9b.

8 (q) "Registered service agency" means ~~any~~**an** agency, firm,
9 company, or corporation that installs, services, repairs, ~~or~~
10 reconditions, **or places into service** commercial weights and
11 measures and that holds a registration issued by the director.

12 (r) "Registered serviceperson" means an individual who
13 installs, services, repairs, ~~or~~ reconditions, **or places into**
14 **service** commercial weights and measures and who holds a
15 registration issued by the director.

16 (s) "Registration audit" means **an official inspection of a**
17 **registered service agency's or registered serviceperson's accounts,**
18 **paperwork, and offices.**

19 (t) ~~(s)~~—"Rule" means an administrative rule promulgated
20 pursuant to the administrative procedures act of 1969, 1969 PA 306,
21 MCL 24.201 to 24.328.

22 (u) ~~(t)~~—"Sell" or "sale" means sale, barter, or exchange.

23 (v) ~~(u)~~—"Type" means a model or models of a particular device
24 measurement system, instrument, element, or a field standard that
25 positively identifies the design and that may vary in its
26 measurement ranges, size, performance, and operating
27 characteristics as specified in the certificate of conformance.

28 (w) ~~(v)~~—"Type evaluation" means the testing, examination, and
29 evaluation of a type by a participating laboratory under the NTEP.

1 **(x)** ~~(w)~~ "Weight", in connection with any commodity or service,
2 means net weight.

3 **(y)** ~~(x)~~ "Weights and measures" means weights and measures of
4 every kind, instruments and devices for weighing and measuring,
5 grain moisture meters, and any appliances and accessories
6 associated with any or all of those instruments and devices.
7 Weights and measures include automatic checkout systems. Weights
8 and measures do not include meters for the measurement of
9 electricity, natural or manufactured gas, water, or the usage of
10 communications services when any of these meters are regulated and
11 tested as part of a public utilities system.

12 **(z)** ~~(y)~~ "Weighing and measuring device" means all instruments
13 and devices of every kind used to determine the quantity of any
14 commodity and includes weights and measures and any appliance and
15 accessories associated with any of these instruments and devices,
16 except meters, appliances, and accessories that are part of a
17 public utility regulated by the Michigan public service commission.

18 **(aa)** ~~(z)~~ "Weighing and measuring establishment" means a
19 location with 1 or more commercial weighing and measuring devices
20 or any operation that employs commercial weighing and measuring
21 devices that are mobile.

22 Sec. 9a. (1) A weighing device placed in service after January
23 1, 1988 ~~shall~~ **must** have valid certificates of conformance before
24 use for commercial or law enforcement purposes. ~~However, a~~ **A** non-
25 NTEP ~~measuring~~ **weighing** device for special use may be used for
26 products for which an NTEP ~~measuring~~ **weighing** device is not readily
27 available, if all of the following conditions are met:

28 (a) The device owner receives written approval from the
29 director.

1 (b) The device is tested on an annual basis by a registered
2 service agency.

3 (c) The registered service agency records all testing data and
4 the records are retained on site and made available to the
5 department ~~upon~~**-on** request.

6 (2) A measuring device placed in service on or after October
7 29, 2002, ~~shall~~**must** have valid certificates of conformance before
8 use for commercial or law enforcement purposes. ~~However, a~~**A** non-
9 NTEP measuring device for special use may be used for products for
10 which an NTEP measuring device is not readily available, if all of
11 the following conditions are met:

12 (a) The device owner receives written approval from the
13 director.

14 (b) The device is tested on an annual basis by a registered
15 service agency.

16 (c) The registered service agency records all testing data and
17 the records are retained on site and made available to the
18 department ~~upon~~**-on** request.

19 (3) The director may operate a participating laboratory as
20 part of NTEP. The director may charge and collect fees pursuant to
21 section 10b for services rendered by the participating laboratory.

22 Sec. 9b. (1) The director shall issue a registration for
23 servicepersons and service agencies seeking registration under this
24 section in accordance with the standards described in section 28c.
25 Registration with the director under this section is voluntary.

26 (2) A person may apply for initial and renewal registration as
27 a serviceperson or service agency in specific competency areas.
28 Competence in a subject matter area may be demonstrated by scoring
29 at least 80% on a department-approved competency test for that area

1 in compliance with the standards described in section 28c. A
2 registrant shall retake the department-approved competency test
3 every 4 years or as otherwise required by law.

4 (3) The term of registration is 2 years from the date of
5 issuance. A registration may be transferred to a different
6 registered service agency if the registration is retained by the
7 original serviceperson and the new service agency pays the service
8 agency registration fee.

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

11 (5) Certification of standards used by the registered
12 serviceperson or registered service agency ~~shall~~**must** be
13 accomplished by the registrant at least biennially. The
14 certification of standards may be done at any approved laboratory.
15 The registrant shall submit documentation of international
16 standards traceable calibration reports with the registration or
17 renewal application.

18 (6) Within 5 business days after a device is returned to
19 service or placed in service, the original of a properly executed
20 placed-in-service report, ~~together with~~**all applicable test or**
21 **calibration data, and** any official department rejection tag removed
22 from the device ~~, shall~~**must** be mailed to the director at an
23 address indicated on the tag.

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

- 27 (a) Written warning.
28 (b) Conference with the director.
29 (c) Suspension of the registration.

1 (d) Revocation of the registration.

2 (8) Before the suspension or revocation of a registration, the
3 director shall notify the registrant in writing stating the reasons
4 for the registration being subject to suspension or revocation and
5 advising that the registration ~~shall~~**must** be suspended or revoked
6 15 days after the sending of the notice unless the registrant files
7 a request for a hearing with the department within that 15-day
8 period. If a written request for a hearing is not filed within the
9 15-day period, the department shall suspend or revoke the
10 registration.

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

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

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

22 (b) Failure of a weighing or measuring device during an
23 official inspection within 30 days after being placed in service
24 following a major overhaul or repair that may or may not have been
25 the result of an official condemnation by a weights and measures
26 official.

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

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

1 standards.

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

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

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

8 (h) **Placing a device in service without having the proper**
9 **certification as required by law.**

10 (i) **Failure to comply with a request for documents or other**
11 **information related directly to a registration audit.**

12 (j) **Failure to submit a placed-in-service report for a**
13 **weighing and measuring device found in an out-of-tolerance**
14 **condition and returned to a condition as close to zero as**
15 **practicable.**

16 (k) **Failure to properly seal a device.**

17 (l) **Failure to employ the use of an approved security seal that**
18 **contains a unique identifying mark that is approved and is**
19 **registered with the department.**

20 Sec. 24. **(1)** Except as otherwise provided in this act, any
21 commodity in package form kept for the purpose of sale, or offered
22 or exposed for sale, ~~shall~~**must** bear on the outside of the package
23 ~~such definite, plain, legible, and conspicuous declarations of (1)~~
24 ~~the~~**all of the following:**

25 (a) **The** identity of the commodity in the package, unless the
26 ~~same~~**commodity** can easily be identified through the wrapper or
27 container. ~~,(2)~~

28 (b) **Except as otherwise provided in this act,** the net quantity
29 of the contents in terms of weight, measure, or count. ~~, but the~~

1 **The** term "when packed" or any words of similar import, or any term
 2 qualifying a unit of weight, measure, or count, such as "jumbo",
 3 "giant", "full", ~~or "approximate", and~~ the like ~~, that tend~~ **tends**
 4 to exaggerate the amount of commodity in a package, ~~shall~~ **must** not
 5 be used. ~~, and (3) the~~

6 **(c) The** name and place of business of the manufacturer, packer
 7 or distributor in the case of any package kept, offered or exposed
 8 for sale, or sold any place other than on the premises where packed
 9 as may be prescribed by regulation promulgated by the director.

10 **(2) The** director shall, by regulation, establish reasonable
 11 variations to be allowed ~~, which that~~ may include variations below
 12 the declared weight or measure caused by ordinary and customary
 13 exposure to conditions that normally occur in good distribution
 14 practice and that unavoidably result in decreased weight or
 15 measure. ~~Such The~~ regulations ~~shall~~ **must** provide for exemptions for
 16 small packages and for commodities put up in variable weights or
 17 sizes for sale intact and either customarily not sold as individual
 18 units or customarily weighed or measured at time of sale to the
 19 consumer.

20 Sec. 27. Whenever a commodity in package form is advertised in
 21 any manner and the retail price of the package is stated in the
 22 advertisement, there ~~shall~~ **must** be closely and conspicuously
 23 associated with ~~such the~~ statement of price a declaration of the
 24 basic quantity of contents of the package as is required by law or
 25 regulation to appear on the package, except that this section ~~shall~~
 26 **must** not apply to products for agricultural or horticultural use
 27 where the custom is to state the number of objects or amount of
 28 area ~~which that~~ can be treated per package unit and the number or
 29 area is ~~so~~ stated. Where the law or regulation requires the

1 declaration of net quantity to appear on the package in terms of
 2 more than 1 unit of weight or measure, only the smallest unit of
 3 weight or measure need be stated in the advertisement. In
 4 connection with the declaration the qualifying term "when packaged"
 5 or any other words of similar import, or any term qualifying a unit
 6 of weight, measure or count, for example, "jumbo", "giant", "full",
 7 **"approximate"**, and the like that tends to exaggerate the amount of
 8 commodity in the package, ~~shall~~**must** not be used.

9 Sec. 28c. (1) Except as otherwise provided for in this
 10 subsection, the method of sale of a commodity sold in this state
 11 ~~shall~~**must** conform to the "uniform regulation for the method of
 12 sale of commodities" published in the ~~2014~~**2023** edition of the NIST
 13 handbook 130, which is incorporated by reference, except as
 14 otherwise provided in this section or where modified by rule.
 15 Section ~~2.20.1~~**2.21** of the "uniform regulation for the method of
 16 sale of commodities" **published in the 2023 edition of the NIST**
 17 **handbook 130** is not adopted. The buying and selling of liquefied
 18 petroleum gas may also be conducted by a flat rate price, if the
 19 price rate is clearly and conspicuously posted for potential
 20 customer viewing. This subsection applies only to tanks of 100
 21 pounds or less.

22 (2) ~~The~~**Except as otherwise provided in this subsection, the**
 23 packaging and labeling requirements for commodities sold in this
 24 state ~~shall~~**must** conform to the "uniform packaging and labeling
 25 regulation" published in the ~~2014~~**2023** edition of the NIST handbook
 26 130, which is incorporated by reference, except for section 13 of
 27 that publication or except as otherwise modified by rule. **A cottage**
 28 **food operation does not have to include the address of the cottage**
 29 **food operation on a label if both of the following conditions are**

1 met:

2 (a) The cottage food product is produced in accordance with
3 section 4102 of the food law, 2000 PA 92, MCL 289.4102.

4 (b) The cottage food operation is registered with and is
5 issued a registration number by the MSU Product Center in
6 accordance with section 4102(8) of the food law, 2000 PA 92, MCL
7 289.4102.

8 (3) A certificate of conformance for a type ~~shall~~**must** comply
9 with the requirements of NCWM publication 14, "national type
10 evaluation program technical policy, checklists and test
11 procedures", and the ~~2014~~**2023** edition of the NIST handbook 44,
12 "specifications, tolerances, and other technical requirements for
13 weighing and measuring devices", which is incorporated by
14 reference.

15 (4) The determination for a uniform basis conformance for a
16 type ~~shall~~**must** comply with NCWM publication 14, "national type
17 evaluation program technical policy, checklists and test
18 procedures", and the ~~2014~~**2023** edition of the NIST handbook 44,
19 "specifications, tolerances, and other technical requirements for
20 weighing and measuring devices", which is incorporated by
21 reference.

22 (5) The specifications, tolerances, and regulations for
23 commercial weights and measures ~~shall~~**must** be in compliance with
24 the standards contained in the ~~2014~~**2023** edition of the NIST
25 handbook 44, which is incorporated by reference.

26 (6) Registration for servicepersons and service agencies and
27 competency tests ~~shall~~**must** be in compliance with the standards
28 contained in the ~~2014~~**2023** edition of the NIST handbook 130,
29 "uniform regulation for the voluntary registration of

1 servicepersons and service agencies for commercial weighing and
2 measuring devices", which is incorporated by reference, and the
3 ~~2014-2023~~ edition of the NIST handbook 44, which is incorporated by
4 reference.

5 (7) For purposes of implementing the ~~2014-2023~~ edition of the
6 NIST handbook 44 and the ~~2014-2023~~ edition of the NIST handbook
7 130, "ton" means a weight of 2,000 pounds avoirdupois and "gross
8 ton" means a weight of 2,240 pounds avoirdupois.

9 (8) Notwithstanding any other provision of this act, a motor
10 vehicle repair facility registered under the motor vehicle service
11 and repair act, 1974 PA 300, MCL 257.1301 to 257.1340, is subject
12 to the oversight of the secretary of state under that act. If the
13 secretary of state believes that a motor vehicle repair facility
14 may have violated section 2.33, "Oil", of the "uniform regulation
15 for the method of sale of commodities", of the ~~2014-2023~~ edition of
16 the NIST handbook 130, which is incorporated by reference, the
17 secretary of state may refer the matter to the department. A motor
18 vehicle repair facility is not subject to oversight by the
19 department under this act for a violation of section 2.33, "Oil",
20 of the "uniform regulation for the method of sale of commodities",
21 of the ~~2014-2023~~ edition of the NIST handbook 130 unless the matter
22 has been referred to the department by the secretary of state as
23 provided for in this subsection.

24 Sec. 28e. (1) Beginning July 2, 2013, if motor fuel is sold at
25 a roadside retail location, the roadside advertising ~~shall~~**must**
26 comply with all of the following:

27 (a) The price advertised ~~shall~~**must** be clearly and completely
28 posted in full, including any fractional prices, to the tenth of a
29 cent.

1 (b) The price advertised ~~shall~~**must** include the grade of fuel
2 being sold, with the following abbreviations allowed:

3 (i) Regular gasoline: "Regular", "Reg.", or "Reg,".

4 (ii) Midgrade gasoline: "Midgrade", "Mid.", or "Mid,".

5 (iii) Premium gasoline: "Premium", "Prem.", or "Prem,".

6 (iv) Diesel fuel: "Diesel", "Dsl.", or "Dsl,".

7 (v) Kerosene fuel: "Kerosene", "Ker.", or "Ker,".

8 (vi) E85 fuel ethanol: "E85".

9 (c) All prices ~~shall~~**must** be capable of being displayed at the
10 pump, but only the unit price of the selected product ~~shall~~**must** be
11 displayed during the transaction. All indications on the pump
12 display ~~shall~~**must** calculate the correct total price of the
13 purchase.

14 (d) ~~Subject to subsection (3), if~~**If** the advertised price of
15 the motor fuel is subject to 1 or more conditions for sale at that
16 price, ~~other than payment by cash or credit card,~~ the retailer
17 shall post the conditions immediately adjacent to the sales price
18 with equal illumination in lettering of the same style and of at
19 least 1/2 the size that is used to post the sale price.

20 (e) If the unit price for the same grade of motor fuel
21 differs, and the sign will not accommodate displaying all prices in
22 lettering of the same style and size, the highest price ~~shall~~**must**
23 be displayed in lettering using the largest size of the prices that
24 are displayed.

25 (2) Subsection (1)(b) does not preclude the owner or operator
26 of a business selling motor fuel at a roadside retail location from
27 using a proprietary fuel name.

28 ~~(3) Beginning July 2, 2017, the requirement of subsection~~
29 ~~(1)(d) also applies to conditions regarding payment by cash or~~

1 ~~credit card.~~

2 Sec. 28f. (1) If a pump for dispensing motor fuel for sale at
3 a roadside retail location includes a scanning device for reading a
4 customer payment card as an integral part of the pump, the pump
5 must include a security measure to restrict the unauthorized access
6 of customer payment card information. The security measure must
7 include 1 or more of the following:

8 (a) ~~Pressure sensitive~~ **Until December 31, 2022, a pressure-**
9 **sensitive** security tape that is imprinted with a customized graphic
10 and placed over the panel opening leading to the scanning device so
11 as to restrict unauthorized opening of the panel.

12 (b) A device or system to render the pump or the scanning
13 device inoperable if the panel is opened without proper
14 authorization.

15 (c) A means for encrypting the customer payment card
16 information in the scanning device.

17 (d) A device to replace a manufacturer-supplied standard lock.

18 (e) Any other measure approved by the department.

19 (2) If the owner or agent of the owner of a pump required to
20 have a security measure under subsection (1) receives a written
21 notice of noncompliance, he or she shall bring the pump into
22 compliance. If the violation is not corrected within 5 days after
23 receipt of the notice of noncompliance, the department may prohibit
24 the use of the pump until a properly functioning security measure
25 is installed on the device.

26 (3) As used in this section:

27 (a) "Customer payment card" means a credit or debit card or
28 other card encoded to provide an electronic means for initiating a
29 fund transfer from the customer's deposit account or for initiating

1 electronic billing.

2 (b) "Pump" means a device for measuring and dispensing motor
3 fuel used to propel vehicles on the highways of this state.

4 (c) "Scanning device" means a scanner, reader, or any other
5 electronic device that is used to access, read, scan, obtain,
6 memorize, or store, temporarily or permanently, information encoded
7 on the magnetic strip or stripe of a customer payment card.

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

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

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

29 (i) A properly executed and completed placed-in-service report

1 has been delivered to the director as notification that the weights
2 and measures have been placed in service by a registered
3 serviceperson.

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

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

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

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

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

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

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

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

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

1 prescribed.

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

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

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

19 (2) ~~A person~~ **An individual** who, by himself or herself or by
20 the ~~person's~~ **individual's** servant or agent, or as a servant or
21 agent of another person, fails to disclose to the department any
22 knowledge of information relating to, or observation of, any device
23 or instrument added to or modifying any weight or modifying any
24 measure for the purpose of selling, offering, or exposing for sale
25 less than the quantity represented of a commodity or calculated to
26 falsify the weight or measure, if the ~~person~~ **individual** is an owner
27 or employee of an entity involved in the installation, repair,
28 sale, or inspection of weights and measures, is guilty of a
29 misdemeanor ~~and may be fined~~ **punishable by imprisonment for not**

1 **more than 90 days or a fine of** not more than \$1,000.00, ~~or~~
2 ~~imprisoned for not more than 90 days,~~ or both.

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

11 (a) ~~Adds~~ **Is in possession of or adds** to or modifies commercial
12 weights and measures by the addition of a device or instrument that
13 would allow the sale, or the offering or exposure for sale, of less
14 than the quantity represented of a commodity or the falsification
15 of the weights and measures.

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

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

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

24 (5) In addition to any other applicable penalties prescribed
25 in this act, the department may assess the owner of a motor fuel
26 delivery facility that has intentionally delivered less fuel to a
27 retail customer than indicated by the gas pump metering device the
28 following civil fines:

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

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

2 (c) For a third or subsequent violation, a civil fine of
3 \$25,000.00.

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

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

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

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

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

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

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

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

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

11 (a) Initiate a criminal prosecution.

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

17 (3) Upon finding a violation of any provision of this act or
18 rules promulgated under this act as a result of the commencement of
19 an action under subsection (2)(b), the ~~director~~**court** shall assess
20 ~~an administrative fine or~~ a civil fine of not more than \$10,000.00
21 **for each violation** plus **the** actual costs of the investigation ~~plus~~
22 **and** the amount of any economic benefit associated with the
23 violation as prescribed in subsection (1).

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

27 (5) The director shall advise the attorney general of the
28 failure of any person to pay ~~an administrative fine or~~ a civil fine
29 imposed under this section. The attorney general shall bring an

1 action in ~~a court of competent jurisdiction~~ to recover the fine.

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