



**House
Legislative
Analysis
Section**

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WEIGHTS AND MEASURES ACT

**House Bill 5525 (Substitute H-1)
First Analysis (2-6-02)**

**Sponsor: Rep. Gerald Van Woerkam
Committee: Agriculture and Resource
Management**

THE APPARENT PROBLEM:

Consumers depend heavily on the accuracy of weights and measures to ensure that they are receiving the quantity of goods that they are paying for. Uniform standards for weights and measures govern the specifications for gasoline pumps, heating fuel, grocery scales and scanners, and product packages and labels. Weights and measures regulatory professionals set standards and enforce uniform procedures to verify that devices accurately measure weight, volume, length, or count.

In Michigan, the responsibility for ensuring the accuracy of weights and measures falls on the Department of Agriculture (MDA). The MDA supervises and inspects weights and measures to ensure equity and fairness in the marketplace for all transactions based on measurement. Statewide, the MDA inspects over 50,000 establishments and over 200,000 devices. Over \$200 billion in commerce is affected by the MDA's weights and measures program, operated through the Laboratory Division.

Under current law, the state follows the specifications, tolerances, and regulations for commercial weighing and measuring devices set forth by the 1982 edition of the National Bureau of Standards Handbook 44. Legislation has been introduced to update state standards to follow the 2002 edition of Handbook 44 and the 2002 editions of other handbooks pertaining to the sale of commodities, packaging and labeling requirements, and the voluntary registration of service persons and agencies.

THE CONTENT OF THE BILL:

House Bill 5525 would amend the Weights and Measures Act by adding provisions pertaining to the voluntary registration of service persons and service agencies. In addition, the bill would update certain provisions to coincide with current national standards for weights and measures.

Automatic Checkout Systems. The bill would define an "automatic checkout system" to mean an electronic device, computer, or machine that determines the price of a consumer item by using a product identity code and could, but would not be required to, include an optical scanner. Automatic checkout systems would be added to the definition of "weights and measures", as used in the act. In addition, the bill would allow the director of the Department of Agriculture (MDA), or his or her designee, to promulgate rules pertaining to the standards for automatic checkout systems.

Certificate of Conformance. The bill would define a "certificate of conformance" to mean a document issued by the National Conference on Weights and Measures (NCWM) based on testing by a participating laboratory that constitutes evidence of conformance of a type.

Participating Laboratory. The bill would define a participating laboratory to mean a state measurement laboratory that has been accredited by the National Conference on Weights and Measures (NCWM) to conduct a type evaluation under the National Type Evaluation Program (NTEP), and that was acceptable to the director. The director could operate a participating laboratory as part of the National Type Evaluation Program (NTEP). In addition, the MDA could collect fees for services rendered for operating a participating laboratory.

Type. The bill would define "type" to mean a model of a particular measurement system, instrument, element, or a field standard that positively identifies the design and that may vary in its instrument ranges, size, performance, and operating characteristics as specified in the certificate of conformance.

Type Evaluation. The bill would define "type evaluation" to mean the testing, examination, and evaluation of a type by a participating laboratory.

House Bill 5525 (2-6-02)

Administrative Rules. Under the act, the director is required to promulgate rules that provide for specifications, tolerances, and regulations for weights and measures kept for sale or used commercially. The specifications, tolerances, and regulations for commercial weights and measures, along with any amendments to them, as recommended by the 1982 edition of the National Bureau of Standards Handbook 44, are the specifications and tolerances for commercial weights and measures in the state, except as amended or rejected by a rule promulgated by the director. The bill would update current specifications and tolerances to include any amendments recommended by the 2002 edition of the U.S. Department of Commerce National Institute of Science and Technology (NIST) Handbook 44.

Exemptions. Under the bill, the director could grant exemptions to the specifications, if a written request for the exemption were submitted stating the reason for the exemption. The term of the exemption would be set by the director, and the exemption would be subject to revocation if the terms of the exemption agreement were not met. In addition, the bill would delete provisions in the act requiring the director to promulgate rules pertaining to the testing and evaluation of grain moisture meters for accuracy.

Weighing Devices. Under the bill, a weighing device manufactured or placed in service after January 1, 1988 would be required to have valid certificates of conformance before it could be used for commercial or law enforcement purposes.

Measuring Devices. Under the bill, a measuring device manufactured or placed in service six months after the effective date of the bill would be required to have certificates of conformance before it could be used for commercial or law enforcement purposes.

Voluntary Registration. The director would register service persons and service agencies seeking to be registered, in accordance with the provisions of the bill and the uniform regulations for the voluntary registration of service persons and service agencies for commercial weighing and measuring devices (from the 2002 edition of the NIST Handbook 130).

A person could apply for an initial and renewal registration as a service person or agency in a certain competency area. A person could demonstrate competence in a subject area by submitting a certification of completion of the NCWM training module for that area or by scoring at least 80 percent on a department-approved competency test. Documentation for a renewal would not be required

unless documentation were required as a result of changes in the NCWM training module and those changes were adopted by rule of the director, or as otherwise required by law.

The registration would be for a period of two years. Registration could be transferred to another service agency if the original service person retains the registration, and the new service agency pays the registration fee. Subject to current law regarding fee schedules (MCL 290.610b), registration fees would be \$150 per service agency and \$50 per service person.

Certification of standards used by the registered service person or agency would be done at least biannually, and could be done at a participating laboratory. Documentation of NIST accreditation would have to accompany the application for initial registration or a renewal.

Violations. The director could deny, suspend, or revoke a registration as a result of a violation of the act or any rule adopted under the act. Prior to a suspension or revocation of a registration, the director would have to notify the person in writing, and advise him or her that the registration would be suspended or revoked in 15 days unless he or she were to file a request for a hearing with the department within the 15-day period. The notification would have to be personally delivered to sent by registered or certified mail.

The director could initiate an enforcement action (including a written warning, conference with the director, suspension, or revocation of registration) for any of the following reasons:

- Failure of a weighing device during an official inspection within the last 30 days after being placed in service following an initial installation or major overhaul, as a result of an official condemnation.
- The return to commercial use of a device tagged “not sealed”.
- Placing a device in service with improper or insufficient standards.
- Falsifying a placed-in-service report or test report.
- Placing in service or allowing to remain in service, without notifying the director, an incorrect weighing or measuring device. The original placed-in-service report and any official rejection tag removed from the device would have to be mailed to the director within

five days after the device is restored to service or placed in service.

An owner or operator of weights and measures that were assessed an administrative fine, civil fine, or fee (or combination of fines and fees) who did not pay the required amount within 60 days could be subject to a stop use order for those weights and measures.

Fees. Under current law, a fee cannot be charged for the regular inspection of scales, weights, measures, and weighing or measuring devices. Under the bill, a fee would not be charged for “any item or commodity subject to the act”.

Under current law, the MDA is to adjust the schedule of fees for special weights and measures inspections. In addition, the MDA is required to review and adjust the fee schedule for reinspections at the end of each year. Under the bill, the MDA would be allowed to annually adjust the fee schedule for reinspections, voluntary registrations, type evaluations, special weights and measures inspections, and other special services requested by the department.

Standards. The bill would place in the statute the following standards:

- The method of sale of a commodity sold in the state would have to conform to the *Uniform Regulation for the Method of Sale of Commodities* published in the 2002 edition of the NIST Handbook 130, incorporated by reference, except as modified by rule.
- The packaging and labeling requirements of commodities sold in the state would have to conform to the *Uniform Packaging and Labeling Regulation* published in the 2002 edition of the NIST Handbook 130, incorporated by reference, except section 13 of handbook (which pertains to cents-off representations, introductory offers, and economy size), and except as modified by rule.
- A certificate of conformance for a type would have to comply with the requirement of the NCWM Publication 14, *National Type Evaluation Program Technical Policy, Checklists, and Test Procedures*, and the 2002 edition of the NIST Handbook 44, *Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices*, incorporated by reference.
- The determination for a uniform basis conformance for a type would have to comply with

the NCWM Publication 14 and the 2002 edition of the NIST Handbook 14, incorporated by reference.

- The specifications, tolerances, and regulations for commercial weights and measures would have to comply with the standards contained in the 2002 edition of the NIST Handbook 44, incorporated by reference.
- Registration for service persons and service agencies and competency tests would have to comply with the standards contained in the *Uniform Regulation for the Voluntary Registration of Service Persons and Service Agencies for Commercial Weighing and Measuring Devices* from the 2002 edition of the NIST Handbook 130, and the NIST Handbook 44, incorporated by reference.

Prohibited Acts. The act lists several activities that are misdemeanors punishable by a fine of not more than \$5,000 or imprisonment for not more than one year. Under the bill, any person who engages in any of the prohibited acts could also be subject to a fine not less than \$1,000 or not exceeding \$10,000, or imprisonment of not more than one year, or both. In addition, the bill would add the following to list of prohibited activities:

- Without the use of weights and measures, delivering or issuing a weight or measure quantity determination upon which a commercial transaction is or is intended to be computed.
- Failing to pay a fine or fee.

The act also lists several prohibited activities that are felonies punishable by a fine of not less than \$1,000 or not more \$10,000; or by a fine of not more than twice the amount of any money gained for each day on which a violation has been found; or by imprisonment of not more than five years, or by all three. The bill would increase the maximum fine to \$20,000. Further, the bill would specify that violating a prohibited act within 24 months after two previous violations that resulted in convictions would be a felony and would be subject to the penalties described in this provision.

Consent Agreement. Under the bill, the director could enter into a consent agreement with a person who has violated the act or a rule pursuant to the act, for the assessment of a civil fine, in the following manner:

- For a first violation: Between \$50 and \$1,000.

- For a second violation within two years of the first: Between \$100 and \$5,000.
- For the third violation within two years of the first: Between \$500 and \$10,000.

Added to the fine for a first violation would be the amount of any economic benefit associated with the violation. Added to the fine for a second or third violation would be the actual investigative costs and the amount of any economic benefit associated with the violation.

If a person who has allegedly violated the act or any rule does not enter into a consent agreement, the director could initiate a criminal prosecution; or commence an administrative hearing if the person possesses a registration, or a civil violation proceeding for any other person. Upon a finding that a violation has indeed occurred, the director would have to assess an administrative fine or a civil fine of not more than \$10,000, plus actual investigation costs and the amount of any economic benefit associated with the violation. The director's decision would be subject to judicial review. The director would advise the attorney general of any person who fails to pay an administrative or civil fine, and the attorney general would bring an action to recover the fine. Any civil fine or economic benefit recovered would be paid to the general fund and would be credited to the MDA for the enforcement of the act.

Repealed Act. The bill would repeal Public Act 315 of 1972, which pertains to the selling of meat on the basis of primal cut or carcass weight.

MCL 290.601 et al.

BACKGROUND INFORMATION:

National Institute of Standards and Technology Handbook (NIST) 130. The bill would place into statute standards following the NIST Handbook 130 for the voluntary registration of service persons and agencies, packaging and labeling requirements, and methods for the sale of commodities.

The compilation of the uniform laws and regulations, and other related interpretations and guidelines, was first endorsed by the National Conference on Weights and Measures (NCWM) in 1979. In 1983, the NCWM voted to change the title of the Handbook from *Model State Laws and Regulations* to *Uniform Laws and Regulations*. This was done to indicate that the regulations are intended to be standards rather than guidelines and to imply that the

regulations are intended to be adopted by political subdivisions, other than states, when necessary. The 2002 edition of the handbook contains amendments incorporated at the NCWM's annual meeting in 2001.

Packaging and Labeling Regulations. Packaging and labeling regulations were first adopted by the NCWM in 1952, and have been revised several times over the years. In 1968, the regulations were revised to follow regulations set forth in the federal Fair Packaging and Label Act (FPLA). The purpose of the regulations is to provide accurate and adequate information on packages as to the identity and quantity of their contents so the purchasers can make price and quantity comparisons.

The packaging and labeling regulations apply to all packages, except:

- Inner wrappings not intended to be individually sold to the customer.
- Shipping containers or wrapping used solely for the transportation of any commodities in bulk or in quantity to manufacturers, packers, or processors, or to wholesale or retail distributors. This exclusion does not apply to packages of consumer or nonconsumer commodities.
- Auxiliary containers or outer wrappings used to deliver packages of such commodities to retail customers if the containers or wrappings do not bear any printed matter pertaining to a particular commodity.
- Containers used for retail tray pack displays that are not intended to be sold.
- Open carriers and transparent wrappers or carriers for containers when the wrappers or carriers do not bear any written, printed, or graphic matter obscuring the required label information.
- Packages intended for export to foreign countries.

Method of Sale of Commodities. The uniform regulations of the method of sale of commodities were first established in 1971. These regulations apply to a broad range of food and nonfood products. According to the handbook, its adoption as a regulation by individual jurisdictions will eliminate the need for legislative considerations of necessary changes in the method of sale of particular commodities.

Some of the food products include berries and soft fruits; breads; butter; meat, fish, poultry, and oysters; milk products; and ready-to-eat food products. There are also regulations pertaining to the sale of meat by carcass, side, or primal cut. (Note: The bill would repeal Public Act 315 of 1972, which pertains to the sale of meat by carcass, side, or primal cut.) Some of the nonfood products include fence wire; lumber; peat and peat moss; sod and turf; roofing and roofing material; carpet; and kerosene.

The regulations are generally concerned with the unit of measurement used in the sale of all commodities. For example, fluid milk products (which includes milk, low fat milk, skim milk, cultured milks, and creams) are to be sold in terms of fluid volume. Fence wire products are to be sold by the gauge of the wire; height in terms of inches or centimeters, if applicable; and length in terms of rods, meters, or feet.

Voluntary Registration of Service Persons and Agencies. The regulations for the voluntary registration of service persons and service agencies were first developed by the NCWM in 1966, and were substantially revised in 1984. The regulations are designed to promote uniformity among those jurisdictions that provide for some type of control over the servicing of commercial weighing and measuring devices. The regulations allow a person or agency to *voluntarily* register. Applicants for registration must have available sufficient standards and equipment to adequately test devices according to NIST Handbooks 44, 105-1, 105-2, and 105-3.

Registered persons or agencies have the authority to, until an official examination can be made, place in service a weighing or measuring device that has been officially rejected or place in service or new or used weighing or measuring device. The registered service person or agency is responsible for the installation, repair, or adjustment of devices such that the devices are adjusted as closely as practicable to zero error. Registration does not guarantee the work or fair dealing of the service person or agency, though a person or agency that performs unsatisfactory work would have the registration revoked.

NIST Handbook 44. The NIST Handbook 44 was first published in 1949, though similar versions of the handbook date back to 1918. The handbook is published annually following the annual meeting of the NCWM. The handbook is designed to be a working tool for the weights and measures official, the equipment manufacturer, installer, and

repairperson. The handbook supplies criteria, which enables the inspector to determine the suitability, accuracy, and repetitive consistency of a weighing or measuring device, both in the laboratory and in the field.

All of the specifications, tolerances, and other technical requirements in the handbook are recommended by the NCWM for the official promulgation in and use by the states in exercising their control of a commercial weighing or measuring device. The purpose of the technical requirements is to eliminate from use weights and measures and weighing and measuring devices that give readings that are false, that are of faulty construction, or that facilitate the perpetration of fraud.

The handbook provides technical requirements for weighing or measuring devices such as scales, belt-conveyor scales, milk meters, odometers, taximeters, and grain moisture meters. For example, the handbook states that for taximeters, fares are to be calculated on the basis of distance traveled, time elapsed, or a combination of time and distance.

NCWM Publication 14. The NCWM Publication 14 sets forth the administrative procedures, technical policy, checklists, and test procedures of the National Type Evaluation Program. (See definitions of "certificate of conformance", "participating laboratory", "type" and "type evaluation" in the content section.) The National Type Evaluation Program is a cooperative effort between the NIST, NCWM, the states, and the private sector to determine, on a uniform basis, a particular measurement system (a "type"). Only those devices used in trade or commercial applications are subject to weights and measures requirements. Devices subject to type evaluation by the NTEP include digital electronic scales, automatic weighing systems, belt-conveyor scales, grain moisture meters, and taximeters.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the fiscal impact of the bill is indeterminate and will be dependent upon the number of voluntary registrations. Since a registration fee will accompany the certification, it is anticipated that the bill would be cost neutral. (2-1-02)

ARGUMENTS:**For:**

Under current law, weights and measures inspectors are following guidelines that were in place 20 years ago. Many of the devices in place today were simply not available in 1982. Likewise, many of the devices in place in 1982 are either no longer available today or are simply not practical for today's use. While technology has certainly advanced in 20 years, state laws have not. Furthermore, many businesses follow the federal law, though they are in noncompliance with the older and outdated state laws.

For:

The bill would allow the state to voluntarily register service persons and agencies. Michigan is one of the few states that do not follow this regulation from the National Conference on Weights and Measures. Under current law, when the MDA determines that a device is noncompliant, it cannot be used until the MDA re-inspects the device and determines that it is functioning properly.

Registered service persons and agencies have the authority to, until an official examination can be made, place in service a weighing or measuring device that has been officially rejected or place in service new or used weighing or measuring devices.

Many businesses rely on properly working weights and measures devices. Without provisions for voluntary registration, businesses have to wait for the state to put a device back into service. The bill will allow devices to be placed back into service much faster. This would be very beneficial to businesses and would remove a lot of pressure from the MDA, by allowing the MDA to spend more time investigating consumer complaints and conducting routine inspections.

Against:

As written, the bill updates the act to follow the 2002 edition of the standards for weights and measures. However, these standards are updated annually. To stay current with these standards, the state should adopt the latest editions of these standards as they are amended each year. This would alleviate the current problem where the state is following industry standards that are 20 years old.

Response:

Certainly the state should not wait 20 years to update its standards regarding weights and measures. However, changes in these standards from year to year are not terribly significant, so it is not absolutely

necessary that the state adopt the most current version.

POSITIONS:

The Department of Agriculture supports the bill. (1-31-02)

Spartan Stores, Inc. supports the bill. (1-31-02)

The Kroger Company supports the bill. (1-31-02)

A & P food stores support the bill. (1-31-02)

The Michigan Propane Gas Association supports the bill. (1-31-02)

The Michigan Grocers Association is neutral on the bill. (1-31-02)

The Michigan Agri-business opposes the bill at this time. (2-1-02)

Analyst: M. Wolf

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.