

Senate Fiscal Agency  
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**SFA****BILL ANALYSIS**

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House Bill 5525 (Substitute H-1 as reported without amendment)  
Sponsor: Representative Gerald Van Woerkom  
House Committee: Agriculture and Resource Management  
Senate Committee: Farming, Agribusiness and Food Systems

Date Completed: 4-4-02

### **RATIONALE**

The Michigan Department of Agriculture (MDA) provides the standards for devices that weigh and measure consumer goods, and inspects and enforces those standards. Gasoline pumps, heating fuel, grocery scales and scanners, and product packages and labels are regulated by the MDA in an attempt to prevent economic deception. These regulations and standards are set in statute under the Weights and Measures Act. Currently, the Act refers to a 1982 edition of National Bureau of Standards Handbook 44. Because a 2002 edition of Handbook 44 has been published and 20 years have passed since the Act was last updated, some people believe that the Act should be amended to reflect the latest national standards and current practices.

### **CONTENT**

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

- Adopt uniform national standards published in 2002.**
- Establish a voluntary registration program for service personnel and agencies (who would repair or install commercial weights and measures).**
- Allow the Director of the Michigan Department of Agriculture to issue a stop use order on equipment if a fine or fee were not paid.**
- Increase maximum criminal fines for violations.**
- Allow the Director to enter into consent agreements for the assessment of civil fines, or take other action if an alleged violator did not enter into a consent agreement.**

#### **-- Include automatic checkout systems among regulated weights and measures.**

The bill also would repeal Public Act 315 of 1972, which governs the sale of meat (MCL 289.271-289.276).

#### Uniform Standards

Presently, the Act adopts the specifications, tolerances, and regulations for commercial weights and measures, as recommended by the National Bureau of Standards and published in the 1982 edition of the Bureau's Handbook 44 and supplements to it, as the specifications and tolerances for commercial weights and measures in this State. The bill would delete this provision.

Under the bill, the specifications, tolerances, and regulations for commercial weights and measures would have to be in compliance with the standards contained in the 2002 edition of the NIST Handbook 44. ("NIST" would mean the U.S. Department of Commerce, National Institute of Standards and Technology.)

The method of sale of a commodity in Michigan 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. The packaging and labeling requirements for commodities sold in Michigan would have to conform to the "Uniform Packaging and Labeling Regulation" published in the same handbook, except for Section 13 of that publication.

These publications would be incorporated by reference, except where modified by rule. If

a written request for an exemption were submitted, the MDA Director could grant exemptions to the specifications published in those standards (or other national standards adopted by the bill). The request would have to state the reason an exemption was required or desirable. The term of any granted exemption would have to be set by the Director and the exemption would be subject to revocation if the terms of the exemption agreement were not met.

#### Type Evaluation; Participating Laboratory

Under the bill, a weighing device manufactured or placed in service after January 1, 1988, would have to have valid certificates of conformance before use for commercial purposes or law enforcement purposes. A measuring device manufactured or placed in service six months after the bill's effective date would have to have valid certificates of conformance before use for commercial purposes or law enforcement purposes. ("Certificate of conformance" would mean a document issued by the National Conference on Weights and Measures (NCWM) based on testing by a participating laboratory that constituted evidence of conformance of a type. "Type" would mean a model of a particular measurement system, instrument, element, or a field standard that positively identified the design and could vary in its measurement ranges, size, performance, and operating characteristics as specified in the certificate of conformance.)

The bill would incorporate by reference 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". A certificate of conformance for a type, and the determination for a uniform basis conformance for a type, would have to comply with the requirements of those publications.

The bill would permit the MDA Director to operate a participating laboratory as part of the NTEP, and to charge and collect fees for services rendered by the laboratory. ("Participating laboratory" would mean a State measurement laboratory that had been accredited by the National Conference on Weights and Measures to conduct a type evaluation under the NTEP and determined

otherwise acceptable to the Director. "NTEP" would mean the National Type Evaluation Program administered by the NCWM, in cooperation with the states, the private sector, and the National Institute of Standards and Technology for determining conformance of a type on a uniform basis.)

#### Voluntary Registration Program

The bill would require the MDA Director to issue a registration for service persons and service agencies seeking registration in accordance with the national standards adopted by the bill. Registration would be voluntary. ("Registered service person" would mean an individual who installed, serviced, repaired, or reconditioned commercial weights and measures, and held a registration issued by the Director. "Registered service agency" would mean any agency, firm, company, or corporation that did the same, and held a registration issued by the Director.)

Registration for service persons and service agencies and competency tests would have to be in compliance with the standards contained in the 2002 edition of the NIST Handbook 130, "Uniform Regulation for the Voluntary Registration of Service Persons and Service Agencies for Commercial Weighing and Measuring Devices", and the NIST Handbook 44, which would be incorporated by reference.

A person could apply for initial and renewal registration as a service person or service agency in competency areas. A person could demonstrate competence in a subject matter area either by submitting a certificate of completion of the NCWM training module for that area, or by scoring at least 80% on a Department-approved competency test for that area in compliance with the national standards. Documentation of competency would not be required for renewal unless the NCWM training module were changed and the changes were adopted by rule of the Director or as otherwise required by law.

Except as provided for annual adjustments, the registration fee would be \$150 per service agency and \$50 per service person. The term of registration would be two years from the date of issuance. A registration could be transferred to a different service agency if the original service person retained the registration and the new service agency paid the agency registration fee.

A registered service person or agency would have to accomplish certification of standards used by the registrant at least biannually. The certification of standards could be done at any participating laboratory. The registrant would have to submit documentation of NIST accreditation with the registration or renewal application.

The MDA Director could deny, suspend, or revoke a registration for a violation of the Act or rules adopted under it. Enforcement actions would include, but not be limited to, the following: written warning; conference with the Director; suspension of the registration; and revocation of the registration. Before suspending or revoking a registration, the Director would have to give the registrant written notice stating the reasons for that action and advising that the registration would be suspended or revoked 15 days after the notice was sent unless the registrant requested a hearing within the Department within the 15-day period. If the MDA did not receive a hearing request within that period, it would have to suspend or revoke the registration.

A notice to a registrant would be considered properly served when it was personally delivered to the registrant or when it was sent by registered or certified mail, return receipt requested, to the registrant's last known address.

Except as otherwise provided in the Act, the Director could initiate enforcement action against a registered service person or registered service agency for any or all of the following:

- Failure of a weighing and measuring device during an official inspection within 30 days after it was placed in service following an initial installation or following a major overhaul or repair, as the result of an official condemnation.
- Returning a device tagged "not sealed" to commercial use.
- Placing a device in service with improper or insufficient standards.
- Falsifying a placed-in-service report or test report.

The Director also could initiate enforcement action if a registered service person or agency, without notifying the Director, placed in service an incorrect weighing or measuring

device or allowed an incorrect device to remain in service. Within five business days after a device was restored to service or placed in service, the original of a properly executed placed-in-service report, together with any official rejection tag removed from the device, would have to be mailed to the Director.

The bill would authorize the Director to promulgate rules for the voluntary regulation and registration of registered service persons and registered service agencies. (Currently, the Director may promulgate rules for the voluntary registration of service personnel and service agencies involved in scale inspection. The bill would delete that provision.)

### Fees

Under the Act, a fee may not be charged for the regular inspection of scales, weights, measures, or weighing or measuring devices, although a fee may be charged to the owner of such an item for the reinspection of a device that has been tested and found incorrect, or for an inspection performed at the request of the owner. The bill provides, instead, that a fee could not be charged for the regular inspection of any weights and measures or commodity subject to the Act. A fee could be charged to the owner or responsible party of any weights and measures or commodity for a reinspection, or for an inspection performed at the request of the owner or responsible party.

The Act requires the MDA to fix the fees and expenses for special services. The bill also would require the Department to set the fees for voluntary registration and type evaluation.

Presently, the MDA is required to adjust the schedule of fees for special weights and measures inspections, in order to provide that each type of fee charged is sufficient to cover the cost and that the aggregate of fees collected is sufficient to pay all salaries and other expenses connected with reinspection. Under the bill, the Department would be permitted annually to adjust the schedule of fees for reinspections, voluntary registrations, type evaluations, special weights and measures inspections, and other special services requested of the MDA.

### Criminal Fines

The Act provides that it is a misdemeanor punishable by a maximum fine of \$5,000 and/or imprisonment for up to one year, to engage in certain activities listed in the Act. Under the bill, the fine could not be less than \$1,000 or more than \$10,000.

The bill would extend that penalty to failing to pay a fee or fine imposed under the Act, or delivering or issuing a weight quantity determination or a measure quantity determination upon which a commercial transaction was, or was intended to be, computed without the use of weights and measures.

Under the Act, a person who engages in certain other activities is guilty of a felony punishable by a fine of at least \$1,000 but not more than \$10,000, by a fine of up to twice the amount of any money gained for each day of a violation, and/or by imprisonment for up to five years. The bill would increase the maximum amount of the first fine to \$20,000.

The bill also would extend the felony penalty to a person who committed a prohibited act within 24 months after two previous violations that resulted in convictions.

#### Civil Fine Consent Agreement

The bill provides that, upon a determination that a person had violated the Act, by himself or herself, by his or her agent or employee, or as the agent or employee of another, the Director could enter into a consent agreement for the assessment of a civil fine (plus, in each case, the amount of any economic benefit associated with the violation), as follows:

- For a first violation: at least \$50 but not more than \$1,000.
- For a second violation within two years of the first: at least \$100 but not more than \$5,000 and actual costs of the investigation.
- For a third violation within two years of the first: at least \$500 but not more than \$10,000 and actual costs of the investigation.

If a person alleged to have violated the Act or rules promulgated under it did not enter into a written consent agreement, the Director either could initiate a criminal prosecution, or could commence an administrative hearing conducted under the Administrative

Procedures Act, in the case of a person holding a registration under the Act, or commence a civil violation proceeding in a court regarding any other person.

Upon finding a violation of any provision of the Act or rules as a result of the commencement of an administrative hearing or civil action, the Director would have to assess an administrative fine or civil fine of not more than \$10,000 plus actual costs of the investigation and the amount of any economic benefit associated with the violation.

The Director's decision pursuant to a proceeding under these provisions would be subject to appropriate judicial review as provided by law.

The Director would have to advise the Attorney General of the failure of any person to pay an administrative or civil fine imposed under these provisions. The Attorney General would have to bring a court action to recover the fine.

Any civil fines or the recovery of any economic benefits associated with a violation collected under these provisions would have to be paid to the General Fund and credited to the Department for enforcement of the Act.

#### Other Provisions

Stop Use Order. Under the bill, an owner or operator of weights and measures that were assessed an administrative fine, a civil fine, and/or a fee, who did not pay the assessment within 60 days after written notice of it was sent, would be subject to a stop use order, issued by the Director, for those weights and measures.

Automatic Checkout Systems. The bill specifies that the term "weights and measures" would include automatic checkout systems. "Automatic checkout system" would mean an electronic device, computer, or machine that determined the price of a consumer item by using a product identity code and could, but would not have to, include an optical scanner. The Director could promulgate standards for automatic checkout systems.

MCL 290.601 et al.

#### **BACKGROUND**

The Heffron Metrology Laboratory, the only facility in the State certified by the National Institute of Standards and Technology, supports the Weights and Measures program by providing mass, volume, and length calibrations in accordance with national standards. The MDA uses these standards to verify randomly the accuracy of more than 200,000 commercial weighing devices, the correct net content of packaged commodities, and the proper methods of sale at over 50,000 retail establishments and production facilities in the State.

## **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**

The bill would update 20-year-old standards to ensure that Michigan law is consistent with current industry practices and national standards adopted by most other states. One such update would clarify that automatic checkout devices would be regulated under the Act; currently, automatic checkout machines are not specifically defined as a weight or measurement device. In general, the bill would make the Act easier to understand and follow, a change that would benefit retailers and producers.

Further, the bill would create a new voluntary program for service personnel and agencies that could save retailers and the Department time and money. Currently, when a measuring device is found to be out of compliance, MDA inspectors tag it, and the device may not be used again until an MDA inspector has returned to verify that it has been repaired and is functioning properly. Under the proposed program, individuals who completed a Department-approved competency test would be authorized to repair a device and return it to service, allowing businesses to get measuring devices back into service more quickly. Michigan is one of the few states that does not register service personnel. The voluntary program would result in increased convenience to businesses, and allow the Department to spend more time on consumer complaints and routine inspections.

Legislative Analyst: Claire Layman

## **FISCAL IMPACT**

The bill would result in an indeterminate increase in State revenue associated with the proposed voluntary registration program. Any revenue generated by the new fees would be deposited in the General Fund and earmarked for the weights and measures program. It is believed that any new revenue would cover the costs of administering the registration system.

The bill also would have an indeterminate fiscal impact on the Department of Corrections and local government. There are no statewide data available to indicate how many offenders a year are convicted of misdemeanors for violating the Weights and Measures Act. According to the 1999 Department of Corrections Statistical Report, no offenders were convicted of or currently serving time for felony violations of the Act.

To the extent that the bill would add to the list of prohibited activities, it could increase the number of offenders convicted of misdemeanors. Local units would incur the additional cost of probation and incarceration, which varies by county from \$27 to \$65 per day. The bill also could increase State costs by making a third violation within 24 months a felony punishable by up to five years' imprisonment. If one additional offender were convicted of a felony, sentenced to prison, and received the longest minimum sentence, it would cost the State \$83,000, assuming an average annual cost of incarceration of \$25,000. In addition, the bill would increase the potential penal fine revenue available to libraries by increasing the maximum fines for misdemeanors from \$5,000 to \$10,000 and for felonies from \$10,000 to \$20,000.

Fiscal Analyst: Craig Thiel  
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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.