

REPRINT

SUBSTITUTE FOR

HOUSE BILL NO. 5525

(As passed the House, February 13, 2002)

A bill to amend 1964 PA 283, entitled "Weights and measures act of 1964," by amending sections 1, 2, 8, 10a, 10b, and 31 (MCL 290.601, 290.602, 290.608, 290.610a, 290.610b, and 290.631), sections 2 and 8 as amended by 1982 PA 260 and section 31 as amended by 1986 PA 194, and by adding sections 9a, 9b, 28c, and 31a; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "weights and measures act". ~~of 1964".~~

3 Sec. 2. As used in this act:

4 ~~(a) "Weights and measures" means weights and measures of~~
5 ~~every kind, instruments and devices for weighing and measuring,~~
6 ~~grain moisture meters, and any appliances and accessories~~
7 ~~associated with any or all such instruments and devices; but does~~

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1 ~~not include meters for the measurement of electricity, natural or~~
2 ~~manufactured gas, water, or the usage of communications services,~~
3 ~~when any of these meters are operated in a public utility system,~~
4 ~~and does not include any appliances or accessories associated~~
5 ~~with these meters.~~

6 ~~(b) "Sell" or "sale" means barter and exchange.~~

7 ~~(c) "Director" and "deputy director" mean, respectively, the~~
8 ~~state director of weights and measures and the deputy state~~
9 ~~director of weights and measures.~~

10 ~~(d) "Inspector" means a state inspector of weights and~~
11 ~~measures.~~

12 ~~(e) "Sealer", "deputy sealer", "supervising inspector", and~~
13 ~~"city or county inspector" mean, respectively, a sealer of~~
14 ~~weights and measures; a deputy sealer of weights and measures; a~~
15 ~~supervising weights and measures inspector; and city or county~~
16 ~~weights and measures inspectors of a city, of a county, or of~~
17 ~~joint city-county jurisdiction.~~

18 ~~(f) "Commodity in package form" means a commodity put up or~~
19 ~~packaged in any manner in advance of sale in units suitable for~~
20 ~~either wholesale or retail sale, exclusive, however, of an auxil-~~
21 ~~iary shipping container enclosing packages that individually con-~~
22 ~~form to the requirements of this act. An individual item or lot~~
23 ~~of any commodity not in package form as defined in this section,~~
24 ~~but on which there is marked a selling price based on an estab-~~
25 ~~lished price per unit of weight or of measure, shall be construed~~
26 ~~to be commodity in package form.~~

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1 ~~(g) "Barrel", when used in connection with fermented liquor,~~
2 ~~means a unit of 31 gallons.~~

3 ~~(h) "Ton" means a unit of 2,000 pounds avoirdupois weight.~~

4 ~~(i) "Cord", when used in connection with wood intended for~~
5 ~~fuel purposes or pulpwood, means the amount of wood that is con=~~
6 ~~tained in a space of 128 cubic feet when the wood is ranked and~~
7 ~~well stowed.~~

8 ~~(j) "Weight", in connection with any commodity, means net~~
9 ~~weight.~~

10 ~~(k) "Consumer package" or "package of consumer commodity"~~
11 ~~means a commodity in package form that is customarily produced or~~
12 ~~distributed for sale through retail sales agencies or instrumen=~~
13 ~~talities for consumption by individuals, or use by individuals~~
14 ~~for the purposes of personal care or in the performance of serv=~~
15 ~~ices ordinarily rendered in or about the household or in connec=~~
16 ~~tion with personal possessions, and which usually is consumed or~~
17 ~~expended in the course of that consumption or use.~~

18 ~~(l) "Nonconsumer package" or "package of nonconsumer~~
19 ~~commodity" means any commodity in package form other than a con=~~
20 ~~sumer package, and particularly a package designed solely for~~
21 ~~industrial or institutional use or for wholesale distribution~~
22 ~~only.~~

23 (A) "AUTOMATIC CHECKOUT SYSTEM" MEANS AN ELECTRONIC DEVICE,
24 COMPUTER, OR MACHINE THAT DETERMINES THE PRICE OF A CONSUMER ITEM
25 BY USING A PRODUCT IDENTITY CODE AND MAY, BUT IS NOT REQUIRED TO,
26 INCLUDE AN OPTICAL SCANNER.

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1 (B) "BARREL", WHEN USED IN CONNECTION WITH FERMENTED LIQUOR,
2 MEANS A UNIT OF 31 GALLONS.

3 (C) "CERTIFICATE OF CONFORMANCE" MEANS A DOCUMENT ISSUED BY
4 THE NCWM BASED ON TESTING BY A PARTICIPATING LABORATORY THAT CON-
5 STITUTES EVIDENCE OF CONFORMANCE OF A TYPE.

6 (D) "COMMODITY IN PACKAGE FORM" MEANS A COMMODITY PUT UP OR
7 PACKAGED IN ANY MANNER IN ADVANCE OF SALE IN UNITS SUITABLE FOR
8 EITHER WHOLESALE OR RETAIL SALE INCLUDING AN INDIVIDUAL ITEM OR
9 LOT OF ANY COMMODITY NOT IN A FORM AS DESCRIBED IN THIS SUBDIVI-
10 SION BUT UPON WHICH THERE IS MARKED A SELLING PRICE BASED ON AN
11 ESTABLISHED PRICE PER UNIT OF WEIGHT OR OF MEASURE. COMMODITY IN
12 PACKAGE FORM DOES NOT INCLUDE AN AUXILIARY SHIPPING CONTAINER
13 ENCLOSING PACKAGES THAT CONFORM TO THE REQUIREMENTS OF THIS ACT.

14 (E) "CONSUMER PACKAGE" MEANS A COMMODITY IN PACKAGE FORM
15 THAT IS CUSTOMARILY PRODUCED OR DISTRIBUTED FOR CONSUMPTION BY
16 INDIVIDUALS OR FOR USE BY INDIVIDUALS FOR THE PURPOSES OF PER-
17 SONAL CARE OR IN PERFORMANCE OF SERVICES ORDINARILY RENDERED IN
18 OR ABOUT THE HOUSEHOLD OR IN CONNECTION WITH PERSONAL POSSESSIONS
19 AND THAT USUALLY IS CONSUMED OR EXPENDED IN THE COURSE OF THAT
20 CONSUMPTION OR USE.

21 (F) "CORD", WHEN USED IN CONNECTION WITH WOOD INTENDED FOR
22 FUEL PURPOSES OR FOR PULPWOOD, MEANS THE AMOUNT OF WOOD THAT IS
23 CONTAINED IN A SPACE OF 128 CUBIC FEET WHEN THE WOOD IS RANKED
24 AND WELL STOWED.

25 (G) "DEPARTMENT" MEANS THE MICHIGAN DEPARTMENT OF
26 AGRICULTURE.

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1 (H) "DIRECTOR" MEANS THE DIRECTOR OF THE MICHIGAN DEPARTMENT
2 OF AGRICULTURE OR HIS OR HER DESIGNEE.

3 (I) "INSPECTOR" MEANS AN EMPLOYEE OR AGENT OF THE DEPARTMENT
4 AUTHORIZED TO ENFORCE THIS ACT.

5 (J) "NCWM" MEANS THE NATIONAL CONFERENCE ON WEIGHTS AND
6 MEASURES.

7 (K) "NIST" MEANS THE UNITED STATES DEPARTMENT OF COMMERCE,
8 NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.

9 (L) "NTEP" MEANS THE NATIONAL TYPE EVALUATION PROGRAM ADMIN-
10 ISTERED BY THE NCWM, IN COOPERATION WITH THE STATES, THE PRIVATE
11 SECTOR, AND THE NIST FOR DETERMINING ON A UNIFORM BASIS CON-
12 FORMANCE OF A TYPE.

13 (M) "NONCONSUMER PACKAGE" MEANS ANY COMMODITY IN PACKAGE
14 FORM OTHER THAN A CONSUMER PACKAGE AND INCLUDES, BUT IS NOT
15 LIMITED TO, A PACKAGE DESIGNED SOLELY FOR INDUSTRIAL OR INSTITU-
16 TIONAL USE OR FOR ONLY WHOLESALE DISTRIBUTION.

17 (N) "PARTICIPATING LABORATORY" MEANS A STATE MEASUREMENT
18 LABORATORY THAT HAS BEEN ACCREDITED BY NCWM TO CONDUCT A TYPE
19 EVALUATION UNDER THE NTEP AND DETERMINED OTHERWISE ACCEPTABLE TO
20 THE DIRECTOR.

21 (O) "PLACED-IN-SERVICE REPORT" MEANS THE APPROVED FORM
22 ISSUED TO REGISTERED SERVICE PERSONS AND REGISTERED SERVICE AGEN-
23 CIES FOR THEIR USE IN ACCORDANCE WITH THE REQUIREMENTS OF
24 SECTION 9B.

25 (P) "REGISTERED SERVICE AGENCY" MEANS ANY AGENCY, FIRM, COM-
26 PANY, OR CORPORATION THAT INSTALLS, SERVICES, REPAIRS, OR

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1 RECONDITIONS COMMERCIAL WEIGHTS AND MEASURES AND THAT HOLDS A
2 REGISTRATION ISSUED BY THE DIRECTOR.

3 (Q) "REGISTERED SERVICE PERSON" MEANS AN INDIVIDUAL WHO
4 INSTALLS, SERVICES, REPAIRS, OR RECONDITIONS COMMERCIAL WEIGHTS
5 AND MEASURES AND WHO HOLDS A REGISTRATION ISSUED BY THE
6 DIRECTOR.

7 (R) "RULE" MEANS AN ADMINISTRATIVE RULE PROMULGATED UNDER
8 THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306,
9 MCL 24.201 TO 24.328.

10 (S) "SELL" OR "SALE" MEANS SALE, BARTER, OR EXCHANGE.

11 (T) "TON" MEANS A UNIT OF 2,000 POUNDS AVOIRDUPOIS WEIGHT.

12 (U) "TYPE" MEANS A MODEL OF A PARTICULAR MEASUREMENT SYSTEM,
13 INSTRUMENT, ELEMENT, OR A FIELD STANDARD THAT POSITIVELY IDENTI-
14 FIES THE DESIGN AND THAT MAY VARY IN ITS MEASUREMENT RANGES,
15 SIZE, PERFORMANCE, AND OPERATING CHARACTERISTICS AS SPECIFIED IN
16 THE CERTIFICATE OF CONFORMANCE.

17 (V) "TYPE EVALUATION" MEANS THE TESTING, EXAMINATION, AND
18 EVALUATION OF A TYPE BY A PARTICIPATING LABORATORY.

19 (W) "WEIGHT", IN CONNECTION WITH ANY COMMODITY, MEANS NET
20 WEIGHT.

21 (X) "WEIGHTS AND MEASURES" MEANS WEIGHTS AND MEASURES OF
22 EVERY KIND, INSTRUMENTS AND DEVICES FOR WEIGHING AND MEASURING,
23 GRAIN MOISTURE METERS, AND ANY APPLIANCES AND ACCESSORIES ASSOCI-
24 ATED WITH ANY OR ALL OF THOSE INSTRUMENTS AND DEVICES. WEIGHTS
25 AND MEASURES INCLUDE AUTOMATIC CHECKOUT SYSTEMS. WEIGHTS AND
26 MEASURES DO NOT INCLUDE METERS FOR THE MEASUREMENT OF
27 ELECTRICITY, NATURAL OR MANUFACTURED GAS, WATER, OR THE USAGE OF

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1 COMMUNICATIONS SERVICES WHEN ANY OF THESE METERS ARE REGULATED
2 AND TESTED AS PART OF A PUBLIC UTILITIES SYSTEM.

3 Sec. 8. (1) The director may promulgate ~~reasonable~~ rules
4 necessary to administer and enforce this act. ~~pursuant to Act~~
5 ~~No. 306 of the Public Acts of 1969, as amended, being sections~~
6 ~~24.201 to 24.315 of the Michigan Compiled Laws.~~ These rules may
7 include ANY OF THE FOLLOWING:

8 (a) Standards of net weight, measure, or count.

9 (b) Technical and reporting procedures and the report and
10 record forms and marks of approval and rejection to be used by
11 inspectors ~~of weights and measures~~ in the discharge of their
12 official duties.

13 (c) Exemptions from the sealing or marking requirements of
14 section 14 with respect to weights and measures of the character
15 or size that the sealing or marking would be inappropriate,
16 impractical, or damaging to the apparatus in question.

17 (d) With respect to classes of weights and measures ~~found~~
18 DETERMINED BY THE DIRECTOR to be of a character that frequent
19 retesting is unnecessary to continued accuracy, exemptions from
20 the requirements of sections 9 and 10 for testing and schedules
21 fixing the frequency of required retests for classes of devices
22 so exempted.

23 (e) The voluntary REGULATION AND registration of REGISTERED
24 service ~~personnel~~ PERSONS and REGISTERED service agencies.
25 ~~involved in scale inspection.~~

26 (F) STANDARDS FOR AUTOMATIC CHECKOUT SYSTEMS.

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1 (2) The director shall promulgate rules ~~which~~ THAT provide
2 for specifications, tolerances, and regulations for weights and
3 measures specified in section 10 ~~, which specifications, toler-~~
4 ~~ances, and regulations~~ THAT are designed to eliminate from use,
5 without prejudice to apparatuses ~~which~~ THAT conform as closely
6 as practicable to the official standards, those APPARATUSES that
7 are not accurate, THAT are of such construction ~~that they are~~
8 ~~not~~ SO AS NOT TO BE reasonably permanent in their adjustment or
9 will not repeat their indications correctly, or ~~which~~ THAT
10 facilitate the perpetration of fraud. The specifications, toler-
11 ances, and regulations for commercial ~~weighing and measuring~~
12 ~~devices~~ WEIGHTS AND MEASURES, together with amendments to those
13 specifications, tolerances, and regulations, as ~~recommended by~~
14 ~~the national bureau of standards and published in the 1982 edi-~~
15 ~~tion of the national bureau of standards handbook 44 and supple-~~
16 ~~ments thereto~~ DESCRIBED IN SECTION 28C, shall be the specifica-
17 tions and tolerances for commercial ~~weighing and measuring~~
18 ~~devices~~ WEIGHTS AND MEASURES of this state ~~, except as specif-~~
19 ically SUPPLEMENTED, UPDATED, modified, amended, or rejected by a
20 rule ~~promulgated by~~ OF the director. For the purposes of this
21 act, an apparatus shall be considered to be ~~"~~ correct ~~"~~ when
22 it conforms to all applicable rules ~~promulgated~~ ADOPTED as
23 specified in this section. ~~otherwise the~~ AN apparatus ~~shall~~
24 ~~be~~ IS considered to be ~~"~~ incorrect ~~"~~ IF IT DOES NOT CONFORM
25 TO ALL APPLICABLE STANDARDS INCORPORATED BY REFERENCE IN
26 SECTION 28C AND RULES ADOPTED UNDER THIS SECTION.

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1 ~~(3) The director shall promulgate rules pursuant to Act~~
2 ~~No. 306 of the Public Acts of 1969, as amended, for the testing~~
3 ~~and evaluation of grain moisture meters for accuracy. The direc-~~
4 ~~tor shall consult regularly with the representatives of produc-~~
5 ~~ers, grain dealers, and their trade associations to assist in the~~
6 ~~promulgation of rules and the implementation of this 1982 amenda-~~
7 ~~tory act. The rules shall provide for at least the following:~~

8 ~~(a) The field standard to be used in the testing and evalu-~~
9 ~~ation of grain moisture meters, which shall be the oven method~~
10 ~~for the kind of grain being tested as adopted by the United~~
11 ~~States department of agriculture and contained in chapter XII,~~
12 ~~equipment manual, GR instruction 916-6, published November 15,~~
13 ~~1971, by the United States department of agriculture consumer and~~
14 ~~marketing service.~~

15 ~~(b) Minimum acceptable tolerances for grain moisture~~
16 ~~meters.~~

17 ~~(c) A schedule for the implementation of this 1982 amenda-~~
18 ~~tory act.~~

19 (3) THE DIRECTOR MAY GRANT EXEMPTIONS TO THE SPECIFICATIONS
20 PUBLISHED IN THE STANDARDS, INCORPORATED BY REFERENCE IN
21 SECTION 28C, IF A WRITTEN REQUEST FOR AN EXEMPTION IS SUBMITTED
22 STATING THE REASON AN EXEMPTION IS REQUIRED OR DESIRABLE. THE
23 TERM OF ANY GRANTED EXEMPTION SHALL BE SET BY THE DIRECTOR WITH
24 THE EXEMPTION SUBJECT TO REVOCATION IF THE TERMS OF THE EXEMPTION
25 AGREEMENT ARE NOT MET.

26 SEC. 9A. (1) A WEIGHING DEVICE MANUFACTURED OR PLACED IN
27 SERVICE AFTER JANUARY 1, 1988 SHALL HAVE VALID CERTIFICATES OF

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1 CONFORMANCE BEFORE USE FOR COMMERCIAL PURPOSES OR LAW ENFORCEMENT
2 PURPOSES.

3 (2) A MEASURING DEVICE MANUFACTURED OR PLACED IN SERVICE 6
4 MONTHS AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED
5 THIS SECTION SHALL HAVE VALID CERTIFICATES OF CONFORMANCE BEFORE
6 USE FOR COMMERCIAL PURPOSES OR LAW ENFORCEMENT PURPOSES.

7 (3) THE DIRECTOR MAY OPERATE A PARTICIPATING LABORATORY AS
8 PART OF NTEP. THE DIRECTOR MAY CHARGE AND COLLECT FEES PURSUANT
9 TO SECTION 10B FOR SERVICES RENDERED BY THE PARTICIPATING
10 LABORATORY.

11 SEC. 9B. (1) THE DIRECTOR SHALL ISSUE A REGISTRATION FOR
12 SERVICE PERSONS AND SERVICE AGENCIES SEEKING REGISTRATION UNDER
13 THIS SECTION IN ACCORDANCE WITH THE STANDARDS DESCRIBED IN
14 SECTION 28C. REGISTRATION WITH THE DIRECTOR UNDER THIS SECTION
15 IS VOLUNTARY.

16 (2) A PERSON MAY APPLY FOR INITIAL AND RENEWAL REGISTRATION
17 AS A SERVICE PERSON OR SERVICE AGENCY IN COMPETENCY AREAS.
18 COMPETENCE IN A SUBJECT MATTER AREA MAY BE DEMONSTRATED BY EITHER
19 SUBMITTING A CERTIFICATE OF COMPLETION OF THE NCWM TRAINING
20 MODULE DESCRIBED IN SECTION 28C FOR THAT AREA OR BY SCORING AT
21 LEAST 80% ON A DEPARTMENT-APPROVED COMPETENCY TEST FOR THAT AREA
22 IN COMPLIANCE WITH THE STANDARDS DESCRIBED IN SECTION 28C.
23 DOCUMENTATION OF COMPETENCY IS NOT REQUIRED FOR RENEWAL UNLESS
24 DOCUMENTATION OF COMPETENCY IS REQUIRED AS A RESULT OF CHANGES IN
25 THE NCWM TRAINING MODULE AND THOSE CHANGES ARE ADOPTED BY RULE OF
26 THE DIRECTOR OR AS OTHERWISE REQUIRED BY LAW.

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1 (3) THE TERM OF REGISTRATION IS 2 YEARS FROM THE DATE OF
2 ISSUANCE. A REGISTRATION MAY BE TRANSFERRED TO A DIFFERENT
3 SERVICE AGENCY IF THE REGISTRATION IS RETAINED BY THE ORIGINAL
4 SERVICE PERSON AND THE NEW SERVICE AGENCY PAYS THE SERVICE AGENCY
5 REGISTRATION FEE.

6 (4) SUBJECT TO SECTION 10B(1), THE FEE FOR REGISTRATION
7 UNDER THIS SECTION IS \$150.00 PER SERVICE AGENCY AND \$50.00 PER
8 SERVICE PERSON.

9 (5) CERTIFICATION OF STANDARDS USED BY THE REGISTERED SERV-
10 ICE PERSON OR REGISTERED SERVICE AGENCY SHALL BE ACCOMPLISHED BY
11 THE REGISTRANT AT LEAST BIANNUALLY. THE CERTIFICATION OF STAN-
12 DARDS MAY BE DONE AT ANY PARTICIPATING LABORATORY. THE REGIS-
13 TRANT SHALL SUBMIT DOCUMENTATION OF NIST ACCREDITATION WITH THE
14 REGISTRATION OR RENEWAL APPLICATION.

15 (6) THE DIRECTOR MAY DENY, SUSPEND, OR REVOKE A REGISTRATION
16 FOR A VIOLATION OF THIS ACT OR RULES ADOPTED UNDER THIS ACT.
17 ENFORCEMENT ACTIONS INCLUDE, BUT ARE NOT LIMITED TO, THE
18 FOLLOWING:

- 19 (A) WRITTEN WARNING.
- 20 (B) CONFERENCE WITH THE DIRECTOR.
- 21 (C) SUSPENSION OF THE REGISTRATION.
- 22 (D) REVOCATION OF THE REGISTRATION.

23 (7) BEFORE THE SUSPENSION OR REVOCATION OF A REGISTRATION,
24 THE DIRECTOR SHALL NOTIFY THE REGISTRANT IN WRITING STATING THE
25 REASONS FOR THE REGISTRATION BEING SUBJECT TO SUSPENSION OR REVO-
26 CATION AND ADVISING THAT THE REGISTRATION SHALL BE SUSPENDED OR
27 REVOKED 15 DAYS AFTER THE SENDING OF THE NOTICE UNLESS THE

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1 REGISTRANT FILES A REQUEST FOR A HEARING WITHIN THE DEPARTMENT
2 WITHIN THAT 15-DAY PERIOD. IF A WRITTEN REQUEST FOR A HEARING IS
3 NOT FILED WITHIN THE 15-DAY PERIOD, THE DEPARTMENT SHALL SUSPEND
4 OR REVOKE THE REGISTRATION.

5 (8) A NOTICE UNDER SUBSECTION (7) IS CONSIDERED PROPERLY
6 SERVED WHEN IT IS PERSONALLY DELIVERED TO THE REGISTRANT OR WHEN
7 IT IS SENT BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT
8 REQUESTED, TO THE REGISTRANT'S LAST KNOWN ADDRESS.

9 (9) EXCEPT AS OTHERWISE PROVIDED FOR IN THIS ACT, THE DIREC-
10 TOR MAY INITIATE ENFORCEMENT ACTION AGAINST A REGISTERED SERVICE
11 PERSON OR REGISTERED SERVICE AGENCY FOR ANY OR ALL OF THE
12 FOLLOWING:

13 (A) FAILURE OF A WEIGHING AND MEASURING DEVICE DURING AN
14 OFFICIAL INSPECTION WITHIN 30 DAYS AFTER BEING PLACED IN SERVICE
15 FOLLOWING AN INITIAL INSTALLATION OR FOLLOWING A MAJOR OVERHAUL
16 OR REPAIR, AS THE RESULT OF AN OFFICIAL CONDEMNATION.

17 (B) THE RETURN TO COMMERCIAL USE OF A DEVICE TAGGED "NOT
18 SEALED".

19 (C) PLACING A DEVICE IN SERVICE WITH IMPROPER OR INSUFFI-
20 CIENT STANDARDS.

21 (D) FALSIFYING A PLACED-IN-SERVICE REPORT OR TEST REPORT.

22 (E) PLACING IN SERVICE OR ALLOWING TO REMAIN IN SERVICE,
23 WITHOUT NOTIFYING THE DIRECTOR, AN INCORRECT WEIGHING OR MEASUR-
24 ING DEVICE. WITHIN 5 BUSINESS DAYS AFTER A DEVICE IS RESTORED TO
25 SERVICE OR PLACED IN SERVICE, THE ORIGINAL OF A PROPERLY EXECUTED
26 PLACED-IN-SERVICE REPORT, TOGETHER WITH ANY OFFICIAL REJECTION
27 TAG REMOVED FROM THE DEVICE, SHALL BE MAILED TO THE DIRECTOR.

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1 Sec. 10a. (1) A fee shall not be charged for the regular
2 inspection of ~~scales, weights, measures, and weighing or measur-~~
3 ~~ing devices~~ ANY WEIGHTS AND MEASURES OR COMMODITY SUBJECT TO
4 THIS ACT. A fee shall be charged to the owner ~~of a scale,~~
5 ~~weight, measure, or weighing or measuring device for its inspec-~~
6 ~~tion when~~ OR RESPONSIBLE PARTY OF ANY WEIGHTS AND MEASURES OR
7 COMMODITY SUBJECT TO THIS ACT UNDER EITHER OF THE FOLLOWING
8 CIRCUMSTANCES:

9 (a) The inspection is a reinspection of ~~a device~~ ANY
10 WEIGHTS AND MEASURES OR A LOT SAMPLE OF A COMMODITY SUBJECT TO
11 THIS ACT that has been tested and found incorrect.

12 (b) The inspection is performed at the request of the owner
13 OR RESPONSIBLE PARTY.

14 (2) The department shall fix the fees and expenses for spe-
15 cial services, INCLUDING FEES FOR VOLUNTARY REGISTRATION AND TYPE
16 EVALUATION. ~~Moneys~~ MONEY collected by the department for spe-
17 cial services, fees, and penalties ~~—~~ shall be paid into the
18 ~~state treasury~~ GENERAL FUND and credited to the department of
19 agriculture for weights and measures programs.

20 Sec. 10b. (1) The department ~~of agriculture shall~~ MAY
21 ANNUALLY adjust the schedule of fees for REINSPECTIONS, VOLUNTARY
22 REGISTRATIONS, TYPE EVALUATIONS, special weights and measures
23 inspections, AND OTHER SPECIAL SERVICES REQUESTED OF THE
24 DEPARTMENT to provide that each ~~type~~ CATEGORY of fee charged is
25 sufficient to cover the cost of the ~~reinspection,~~ ACTIVITIES
26 and that the aggregate of fees collected ~~shall be~~ IS sufficient

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1 to pay for all salaries and other expenses connected with
2 ~~reinspection~~ THE ACTIVITIES DESCRIBED IN THIS SUBSECTION.

3 ~~(2) The department of agriculture shall review and adjust~~
4 ~~its schedule of fees for reinspections at the end of each year~~
5 ~~and have all fees charged approved by the director before they~~
6 ~~are adopted.~~

7 (2) AN OWNER OR OPERATOR OF WEIGHTS AND MEASURES THAT ARE
8 ASSESSED AN ADMINISTRATIVE FINE, CIVIL FINE, OR A FEE AS
9 DESCRIBED IN THIS SECTION OR SECTION 10A, OR ANY COMBINATION OF
10 ADMINISTRATIVE FINE, CIVIL FINE, OR FEE, WHO DOES NOT PAY THE
11 ADMINISTRATIVE FINE, CIVIL FINE, OR FEE WITHIN 60 DAYS AFTER
12 WRITTEN NOTICE OF THE ASSESSMENT IS SENT MAY BE SUBJECT TO A STOP
13 USE ORDER, ISSUED BY THE DIRECTOR, FOR THOSE WEIGHTS AND
14 MEASURES.

15 SEC. 28C. (1) THE METHOD OF SALE OF A COMMODITY SOLD IN
16 MICHIGAN SHALL CONFORM TO THE "UNIFORM REGULATION FOR THE METHOD
17 OF SALE OF COMMODITIES" PUBLISHED IN THE 2002 EDITION OF THE NIST
18 HANDBOOK 130, INCORPORATED BY REFERENCE, EXCEPT WHERE MODIFIED BY
19 RULE.

20 (2) THE PACKAGING AND LABELING REQUIREMENTS FOR COMMODITIES
21 SOLD IN MICHIGAN SHALL CONFORM TO THE "UNIFORM PACKAGING AND
22 LABELING REGULATION" PUBLISHED IN THE 2002 EDITION OF THE NIST
23 HANDBOOK 130, INCORPORATED BY REFERENCE, EXCEPT FOR SECTION 13 OF
24 THAT PUBLICATION OR EXCEPT AS OTHERWISE MODIFIED BY RULE.

25 (3) A CERTIFICATE OF CONFORMANCE FOR A TYPE SHALL COMPLY
26 WITH THE REQUIREMENTS OF NCWM PUBLICATION 14, "NATIONAL TYPE
27 EVALUATION PROGRAM TECHNICAL POLICY, CHECKLISTS AND TEST

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1 PROCEDURES" AND THE 2002 EDITION OF THE NIST HANDBOOK 44,
2 "SPECIFICATIONS, TOLERANCES, AND OTHER TECHNICAL REQUIREMENTS FOR
3 WEIGHING AND MEASURING DEVICES", INCORPORATED BY REFERENCE.

4 (4) THE DETERMINATION FOR A UNIFORM BASIS CONFORMANCE FOR A
5 TYPE SHALL COMPLY WITH NCWM PUBLICATION 14, "NATIONAL TYPE EVALU-
6 ATION PROGRAM TECHNICAL POLICY, CHECKLISTS AND TEST PROCEDURES"
7 AND THE 2002 EDITION OF THE NIST HANDBOOK 44, "SPECIFICATIONS,
8 TOLERANCES, AND OTHER TECHNICAL REQUIREMENTS FOR WEIGHING AND
9 MEASURING DEVICES", INCORPORATED BY REFERENCE.

10 (5) THE SPECIFICATIONS, TOLERANCES, AND REGULATIONS FOR COM-
11 Mercial WEIGHTS AND MEASURES SHALL BE IN COMPLIANCE WITH THE
12 STANDARDS CONTAINED IN THE 2002 EDITION OF THE NIST HANDBOOK 44,
13 INCORPORATED BY REFERENCE.

14 (6) REGISTRATION FOR SERVICE PERSONS AND SERVICE AGENCIES
15 AND COMPETENCY TESTS SHALL BE IN COMPLIANCE WITH THE STANDARDS
16 CONTAINED IN THE 2002 EDITION OF THE NIST HANDBOOK 130, "UNIFORM
17 REGULATION FOR THE VOLUNTARY REGISTRATION OF SERVICE PERSONS AND
18 SERVICE AGENCIES FOR COMMERCIAL WEIGHING AND MEASURING DEVICES",
19 INCORPORATED BY REFERENCE, AND THE NIST HANDBOOK 44, INCORPORATED
20 BY REFERENCE.

21 Sec. 31. (1) A person who, by himself or herself or by the
22 person's servant or agent, or as the servant or agent of another
23 person, ~~performs~~ ENGAGES IN any of the following acts is guilty
24 of a misdemeanor and may be fined NOT LESS THAN \$1,000.00 OR not
25 more than ~~\$5,000.00~~ \$10,000.00, or imprisoned for not more than
26 1 year, or both:

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1 (a) Use or have in possession for the purpose of using for
2 any commercial purpose specified in section 10, sell, offer, ~~or~~
3 expose for sale or hire, or have in possession for the purpose of
4 selling or hiring, ~~an incorrect weight or measure~~ WEIGHTS AND
5 MEASURES or any device or instrument used or calculated to fal-
6 sify any ~~weight or measure~~ WEIGHTS AND MEASURES.

7 (b) Use or have in possession for current use in the buying
8 or selling of any commodity or thing, ~~or~~ for hire or award, or
9 in the computation of any basic charge or payment for services
10 rendered on the basis of ~~weight or measure~~ WEIGHTS AND MEASURES
11 or in the determination of ~~weight and measure~~ WEIGHTS AND
12 MEASURES, when a charge is made for the determination, ~~a weight~~
13 ~~or measure~~ WEIGHTS AND MEASURES that ~~has~~ HAVE not been tested
14 and sealed by the appropriate authority, unless 1 or more of the
15 following conditions are met:

16 (i) ~~Written notice has been given to the appropriate~~
17 ~~authority to the effect that the weight or measure is available~~
18 ~~for examination, or is due for reexamination.~~ A PROPERLY EXE-
19 CUTED AND COMPLETED PLACED-IN-SERVICE REPORT HAS BEEN DELIVERED
20 TO THE DIRECTOR AS NOTIFICATION THAT THE WEIGHTS AND MEASURES
21 HAVE BEEN PLACED IN SERVICE BY A REGISTERED SERVICEPERSON.

22 (ii) Permission to use the ~~weight or measure~~ WEIGHTS AND
23 MEASURES has been received from the appropriate authority.

24 (iii) The ~~weight or measure has~~ WEIGHTS AND MEASURES HAVE
25 been exempted from sealing or testing requirements by section 10
26 or by ~~regulation~~ RULE of the director issued under section 8.

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1 (c) Dispose of ~~a~~ rejected or condemned ~~weight or measure~~
2 WEIGHTS AND MEASURES in a manner contrary to law or ~~regulation~~
3 RULE.

4 (d) Remove from ~~a weight or measure~~ WEIGHTS AND MEASURES,
5 contrary to law or ~~regulation~~ RULE, a tag, seal, or mark placed
6 on the ~~weight or measure~~ WEIGHTS AND MEASURES by the appropri-
7 ate authority.

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

10 (f) Take more than the quantity he or she represents of a
11 commodity, thing, or service when, as buyer, he or she furnishes
12 the weight OF THE COMMODITY, THING, OR SERVICE or THE measure OF
13 THE COMMODITY, THING, OR SERVICE by means of which the amount of
14 the commodity, thing, or service is determined.

15 (g) Advertise, ~~or~~ offer, ~~or~~ expose for sale, or sell a
16 commodity, thing, or service in a condition or manner contrary to
17 law.

18 (h) Use in retail trade, except in the preparation of pack-
19 ages put up in advance of sale and of medical prescriptions, ~~a~~
20 ~~weight or measure~~ WEIGHTS AND MEASURES that ~~is~~ ARE not so
21 positioned that ~~its~~ THEIR indications may be accurately read
22 and the weighing or measuring operation observed from some posi-
23 tion which may reasonably be occupied by a customer.

24 (i) Violate a provision of this act or of the ~~regulations~~
25 RULE promulgated under this act for which a specific penalty has
26 not been prescribed.

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

14 (K) DELIVER OR ISSUE A WEIGHT QUANTITY DETERMINATION OR A
15 MEASURE QUANTITY DETERMINATION UPON WHICH A COMMERCIAL TRANSAC-
16 TION IS, OR IS INTENDED TO BE, COMPUTED WITHOUT THE USE OF
17 WEIGHTS AND MEASURES.

18 (l) FAIL TO PAY A FEE OR FINE IMPOSED UNDER THIS ACT.

19 (2) A person who, by himself or herself or by the person's
20 servant or agent, or as a servant or agent of another person,
21 fails to disclose to the department ~~of agriculture~~ any knowl-
22 edge of information relating to, or observation of, any device or
23 instrument added to or modifying any weight or MODIFYING ANY mea-
24 sure for the purpose of selling, ~~or~~ offering, or exposing for
25 sale ~~—~~ less than the quantity represented of a commodity or
26 calculated to falsify the weight or measure, if the person is an
27 owner or employee of an entity involved in the installation,

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1 repair, sale, or inspection of ~~weighing or measuring devices~~
2 WEIGHTS AND MEASURES, is guilty of a misdemeanor and may be fined
3 not more than \$1,000.00, or imprisoned for not more than 90 days,
4 or both.

5 (3) A person who, by himself or herself or by the person's
6 servant or agent, or as a servant or agent of another person,
7 performs any of the following acts is guilty of a felony
8 ~~punishable by a fine of~~ AND MAY BE FINED not less than
9 \$1,000.00 or not more than ~~\$10,000.00~~ \$20,000.00, by a fine of
10 not more than twice the amount of any money gained for each day
11 on which a violation has been found, by imprisonment for not more
12 than 5 years, or by all ~~3~~ of these penalties:

13 (a) Adds to or modifies ~~a~~ commercial ~~weight or measure~~
14 WEIGHTS AND MEASURES by the addition of a device or instrument
15 that would allow the sale, or the offering or exposure for sale,
16 of less than the quantity represented of a commodity or the fal-
17 sification of the ~~weight or measure~~ WEIGHTS AND MEASURES.

18 (b) Intentionally commits any of the acts listed in subsec-
19 tion (1) or (2).

20 (c) VIOLATES A PROHIBITED ACT AS LISTED IN THIS SECTION
21 WITHIN 24 MONTHS AFTER 2 PREVIOUS VIOLATIONS OF THIS SECTION THAT
22 RESULTED IN CONVICTIONS.

23 (4) When a violation results in a conviction under this act,
24 the court may assess against the defendant or his or her agent
25 the costs of ~~prosecution~~ INVESTIGATION and ~~such monies~~ THE
26 MONEY shall be paid to the agency ~~which~~ THAT incurred the
27 expense.

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1 SEC. 31A. (1) THE DIRECTOR, UPON DETERMINATION THAT A
2 PERSON WHO, BY HIMSELF OR HERSELF, HIS OR HER AGENT OR EMPLOYEE,
3 OR AS THE AGENT OR EMPLOYEE OF ANOTHER, HAS VIOLATED THIS ACT OR
4 RULES PROMULGATED UNDER THIS ACT, MAY ENTER INTO A CONSENT AGREE-
5 MENT FOR THE ASSESSMENT OF A CIVIL FINE AS FOLLOWS:

6 (A) FOR A FIRST VIOLATION, NOT LESS THAN \$50.00 AND NOT MORE
7 THAN \$1,000.00 PLUS THE AMOUNT OF ANY ECONOMIC BENEFIT ASSOCIATED
8 WITH THE VIOLATION.

9 (B) FOR A SECOND VIOLATION WITHIN 2 YEARS OF THE FIRST VIO-
10 LATION, NOT LESS THAN \$100.00 OR NOT MORE THAN \$5,000.00 PLUS
11 ACTUAL COSTS OF THE INVESTIGATION AND THE AMOUNT OF ANY ECONOMIC
12 BENEFIT ASSOCIATED WITH THE VIOLATION.

13 (C) FOR A THIRD VIOLATION WITHIN 2 YEARS FROM THE DATE OF
14 THE FIRST VIOLATION, NOT LESS THAN \$500.00 OR NOT MORE THAN
15 \$10,000.00 PLUS ACTUAL COSTS OF THE INVESTIGATION AND THE AMOUNT
16 OF ANY ECONOMIC BENEFIT ASSOCIATED WITH THE VIOLATION.

17 (2) IF A PERSON ALLEGED TO HAVE VIOLATED THIS ACT OR RULES
18 PROMULGATED UNDER THIS ACT DOES NOT ENTER INTO A WRITTEN CONSENT
19 AGREEMENT AS DESCRIBED IN SUBSECTION (1), THE DIRECTOR MAY DO
20 EITHER OF THE FOLLOWING:

21 (A) INITIATE A CRIMINAL PROSECUTION.

22 (B) COMMENCE AN ADMINISTRATIVE HEARING CONDUCTED PURSUANT TO
23 THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306,
24 MCL 24.201 TO 24.328, IN THE CASE OF A PERSON HOLDING A REGISTRA-
25 TION UNDER THIS ACT, OR COMMENCE A CIVIL VIOLATION PROCEEDING IN
26 A COURT OF COMPETENT JURISDICTION REGARDING ANY OTHER PERSON.

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1 (3) UPON FINDING A VIOLATION OF ANY PROVISION OF THIS ACT OR
2 RULES PROMULGATED UNDER THIS ACT AS A RESULT OF THE COMMENCEMENT
3 OF AN ACTION UNDER SUBSECTION (2)(B), THE DIRECTOR SHALL ASSESS
4 AN ADMINISTRATIVE FINE OR A CIVIL FINE OF NOT MORE THAN
5 \$10,000.00 PLUS ACTUAL COSTS OF THE INVESTIGATION AND THE AMOUNT
6 OF ANY ECONOMIC BENEFIT ASSOCIATED WITH THE VIOLATION.

7 (4) THE DECISION OF THE DIRECTOR PURSUANT TO A PROCEEDING
8 UNDER THIS SECTION IS SUBJECT TO APPROPRIATE JUDICIAL REVIEW AS
9 PROVIDED BY LAW.

10 (5) THE DIRECTOR SHALL ADVISE THE ATTORNEY GENERAL OF THE
11 FAILURE OF ANY PERSON TO PAY AN ADMINISTRATIVE FINE OR CIVIL FINE
12 IMPOSED UNDER THIS SECTION. THE ATTORNEY GENERAL SHALL BRING AN
13 ACTION IN A COURT OF COMPETENT JURISDICTION TO RECOVER THE FINE.

14 (6) ANY CIVIL FINES OR RECOVERY OF ANY ECONOMIC BENEFITS
15 ASSOCIATED WITH A VIOLATION OF THIS ACT AND COLLECTED UNDER THIS
16 SECTION SHALL BE PAID TO THE GENERAL FUND AND CREDITED TO THE
17 DEPARTMENT FOR THE ENFORCEMENT OF THIS ACT.

18 Enacting section 1. 1972 PA 315, MCL 289.271 to 289.276, is
19 repealed.