

Act No. 208  
Public Acts of 2002  
Approved by the Governor  
April 26, 2002  
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April 29, 2002  
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**STATE OF MICHIGAN  
91ST LEGISLATURE  
REGULAR SESSION OF 2002**

Introduced by Reps. Van Woerkom and DeRossett

# **ENROLLED HOUSE BILL No. 5525**

AN ACT to amend 1964 PA 283, entitled "An act to regulate and provide standards for weights and measures, and the packaging and advertising of certain commodities; to provide for a state director and other officials and to prescribe their powers and duties; to provide a fee system for certain inspections and tests; to provide penalties for fraud and deception in the use of false weights and measures and other violations; and to repeal certain acts and parts of acts," 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:*

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

Sec. 2. As used in this act:

(a) "Automatic checkout system" means an electronic device, computer, or machine that determines the price of a consumer item by using a product identity code and may, but is not required to, include an optical scanner.

(b) "Barrel", when used in connection with fermented liquor, means a unit of 31 gallons.

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

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

(e) "Consumer package" means a commodity in package form that is customarily produced or distributed for consumption by individuals or for use by individuals for the purposes of personal care or in performance of services ordinarily rendered in or about the household or in connection with personal possessions and that usually is consumed or expended in the course of that consumption or use.

(f) "Cord", when used in connection with wood intended for fuel purposes or for pulpwood, means the amount of wood that is contained in a space of 128 cubic feet when the wood is ranked and well stowed.

(g) "Department" means the Michigan department of agriculture.

(h) "Director" means the director of the Michigan department of agriculture or his or her designee.

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

- (j) "NCWM" means the national conference on weights and measures.
- (k) "NIST" means the United States department of commerce, national institute of standards and technology.
- (l) "NTEP" means the national type evaluation program administered by the NCWM, in cooperation with the states, the private sector, and the NIST for determining on a uniform basis conformance of a type.
- (m) "Nonconsumer package" means any commodity in package form other than a consumer package and includes, but is not limited to, a package designed solely for industrial or institutional use or for only wholesale distribution.
- (n) "Participating laboratory" means a state measurement laboratory that has been accredited by NCWM to conduct a type evaluation under the NTEP and determined otherwise acceptable to the director.
- (o) "Placed-in-service report" means the approved form issued to registered service persons and registered service agencies for their use in accordance with the requirements of section 9b.
- (p) "Registered service agency" means any agency, firm, company, or corporation that installs, services, repairs, or reconditions commercial weights and measures and that holds a registration issued by the director.
- (q) "Registered service person" means an individual who installs, services, repairs, or reconditions commercial weights and measures and who holds a registration issued by the director.
- (r) "Rule" means an administrative rule promulgated under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.
- (s) "Sell" or "sale" means sale, barter, or exchange.
- (t) "Ton" means a unit of 2,000 pounds avoirdupois weight.
- (u) "Type" means a model of a particular measurement system, instrument, element, or a field standard that positively identifies the design and that may vary in its measurement ranges, size, performance, and operating characteristics as specified in the certificate of conformance.
- (v) "Type evaluation" means the testing, examination, and evaluation of a type by a participating laboratory.
- (w) "Weight", in connection with any commodity, means net weight.
- (x) "Weights and measures" means weights and measures of every kind, instruments and devices for weighing and measuring, grain moisture meters, and any appliances and accessories associated with any or all of those instruments and devices. Weights and measures include automatic checkout systems. Weights and measures do not include meters for the measurement of electricity, natural or manufactured gas, water, or the usage of communications services when any of these meters are regulated and tested as part of a public utilities system.

Sec. 8. (1) The director may promulgate rules necessary to administer and enforce this act. These rules may include any of the following:

- (a) Standards of net weight, measure, or count.
- (b) Technical and reporting procedures and the report and record forms and marks of approval and rejection to be used by inspectors in the discharge of their official duties.
- (c) Exemptions from the sealing or marking requirements of section 14 with respect to weights and measures of the character or size that the sealing or marking would be inappropriate, impractical, or damaging to the apparatus in question.
- (d) With respect to classes of weights and measures determined by the director to be of a character that frequent retesting is unnecessary to continued accuracy, exemptions from the requirements of sections 9 and 10 for testing and schedules fixing the frequency of required retests for classes of devices so exempted.
- (e) The voluntary regulation and registration of registered service persons and registered service agencies.
- (f) Standards for automatic checkout systems.

(2) The director shall promulgate rules that provide for specifications, tolerances, and regulations for weights and measures specified in section 10 that are designed to eliminate from use, without prejudice to apparatuses that conform as closely as practicable to the official standards, those apparatuses that are not accurate, that are of such construction so as not to be reasonably permanent in their adjustment or will not repeat their indications correctly, or that facilitate the perpetration of fraud. The specifications, tolerances, and regulations for commercial weights and measures, together with amendments to those specifications, tolerances, and regulations, as described in section 28c, shall be the specifications and tolerances for commercial weights and measures of this state except as specifically supplemented, updated, modified, amended, or rejected by a rule of the director. For the purposes of this act, an apparatus shall be considered to be correct when it conforms to all applicable rules adopted as specified in this section. An apparatus is considered to be incorrect if it does not conform to all applicable standards incorporated by reference in section 28c and rules adopted under this section.

(3) The director may grant exemptions to the specifications published in the standards, incorporated by reference in section 28c, if a written request for an exemption is submitted stating the reason an exemption is required or desirable.

The term of any granted exemption shall be set by the director with the exemption subject to revocation if the terms of the exemption agreement are not met.

Sec. 9a. (1) A weighing device manufactured or placed in service after January 1, 1988 shall have valid certificates of conformance before use for commercial purposes or law enforcement purposes.

(2) A measuring device manufactured or placed in service 6 months after the effective date of the amendatory act that added this section shall have valid certificates of conformance before use for commercial purposes or law enforcement purposes.

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

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

(2) A person may apply for initial and renewal registration as a service person or service agency in competency areas. Competence in a subject matter area may be demonstrated by either submitting a certificate of completion of the NCWM training module described in section 28c for that area or by scoring at least 80% on a department-approved competency test for that area in compliance with the standards described in section 28c. Documentation of competency is not required for renewal unless documentation of competency is required as a result of changes in the NCWM training module and those changes are adopted by rule of the director or as otherwise required by law.

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

(4) Subject to section 10b(1), the fee for registration under this section is \$150.00 per service agency and \$50.00 per service person.

(5) Certification of standards used by the registered service person or registered service agency shall be accomplished by the registrant at least biannually. The certification of standards may be done at any participating laboratory. The registrant shall submit documentation of NIST accreditation with the registration or renewal application.

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

- (a) Written warning.
- (b) Conference with the director.
- (c) Suspension of the registration.
- (d) Revocation of the registration.

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

(8) A notice under subsection (7) is considered properly served when it is personally delivered to the registrant or when it is sent by registered or certified mail, return receipt requested, to the registrant's last known address.

(9) Except as otherwise provided for in this act, the director may initiate enforcement action against a registered service person or registered service agency for any or all of the following:

(a) Failure of a weighing and measuring device during an official inspection within 30 days after being placed in service following an initial installation or following a major overhaul or repair, as the result of an official condemnation.

(b) The return to commercial use of a device tagged "not sealed".

(c) Placing a device in service with improper or insufficient standards.

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

(e) Placing in service or allowing to remain in service, without notifying the director, an incorrect weighing or measuring device. Within 5 business days after a device is 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, shall be mailed to the director.

Sec. 10a. (1) A fee shall not be charged for the regular inspection of any weights and measures or commodity subject to this act. A fee shall be charged to the owner or responsible party of any weights and measures or commodity subject to this act under either of the following circumstances:

(a) The inspection is a reinspection of any weights and measures or a lot sample of a commodity subject to this act that has been tested and found incorrect.

(b) The inspection is performed at the request of the owner or responsible party.

(2) The department shall fix the fees and expenses for special services, including fees for voluntary registration and type evaluation. Money collected by the department for special services, fees, and penalties shall be paid into the general fund and credited to the department of agriculture for weights and measures programs.

Sec. 10b. (1) The department may annually adjust the schedule of fees for reinspections, voluntary registrations, type evaluations, special weights and measures inspections, and other special services requested of the department to provide that each category of fee charged is sufficient to cover the cost of the activities and that the aggregate of fees collected is sufficient to pay for all salaries and other expenses connected with the activities described in this subsection.

(2) An owner or operator of weights and measures that are assessed an administrative fine, civil fine, or a fee as described in this section or section 10a, or any combination of administrative fine, civil fine, or fee, who does not pay the administrative fine, civil fine, or fee within 60 days after written notice of the assessment is sent may be subject to a stop use order, issued by the director, for those weights and measures.

Sec. 28c. (1) The method of sale of a commodity sold in Michigan shall 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 where modified by rule.

(2) The packaging and labeling requirements for commodities sold in Michigan shall conform to the “uniform packaging and labeling regulation” published in the 2002 edition of the NIST handbook 130, incorporated by reference, except for section 13 of that publication or except as otherwise modified by rule.

(3) A certificate of conformance for a type shall comply with the requirements of 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.

(4) The determination for a uniform basis conformance for a type shall comply with 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.

(5) The specifications, tolerances, and regulations for commercial weights and measures shall be in compliance with the standards contained in the 2002 edition of the NIST handbook 44, incorporated by reference.

(6) Registration for service persons and service agencies and competency tests shall 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”, incorporated by reference, and the NIST handbook 44, incorporated by reference.

Sec. 31. (1) A person who, by himself or herself or by the person’s servant or agent, or as the servant or agent of another person, engages in any of the following acts is guilty of a misdemeanor and may be fined not less than \$1,000.00 or not more than \$10,000.00, or imprisoned for not more than 1 year, or both:

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

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

(i) A properly executed and completed placed-in-service report has been delivered to the director as notification that the weights and measures have been placed in service by a registered serviceperson.

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

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

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

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

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

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

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

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

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

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

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

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

(2) A person who, by himself or herself or by the person's servant or agent, or as a servant or agent of another person, fails to disclose to the department any knowledge of information relating to, or observation of, any device or instrument added to or modifying any weight or modifying any measure for the purpose of selling, offering, or exposing for sale less than the quantity represented of a commodity or calculated to falsify the weight or measure, if the person is an owner or employee of an entity involved in the installation, repair, sale, or inspection of weights and measures, is guilty of a misdemeanor and may be fined not more than \$1,000.00, or imprisoned for not more than 90 days, or both.

(3) A person who, by himself or herself or by the person's servant or agent, or as a servant or agent of another person, performs any of the following acts is guilty of a felony and may be fined not less than \$1,000.00 or not more than \$20,000.00, by a fine of not more than twice the amount of any money gained for each day on which a violation has been found, by imprisonment for not more than 5 years, or by all of these penalties:

(a) Adds to or modifies commercial weights and measures by the addition of a device or instrument that would allow the sale, or the offering or exposure for sale, of less than the quantity represented of a commodity or the falsification of the weights and measures.

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

(c) Violates a prohibited act as listed in this section within 24 months after 2 previous violations of this section that resulted in convictions.

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

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

(a) For a first violation, not less than \$50.00 and not more than \$1,000.00 plus the amount of any economic benefit associated with the violation.

(b) For a second violation within 2 years of the first violation, not less than \$100.00 or not more than \$5,000.00 plus actual costs of the investigation and the amount of any economic benefit associated with the violation.

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

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

(a) Initiate a criminal prosecution.

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

(3) Upon finding a violation of any provision of this act or rules promulgated under this act as a result of the commencement of an action under subsection (2)(b), the director shall assess an administrative fine or a civil fine of not more than \$10,000.00 plus actual costs of the investigation and the amount of any economic benefit associated with the violation.

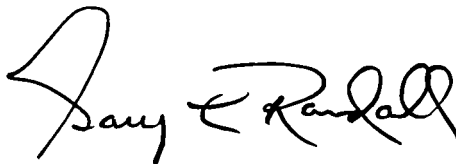
(4) The decision of the director pursuant to a proceeding under this section is subject to appropriate judicial review as provided by law.

(5) The director shall advise the attorney general of the failure of any person to pay an administrative fine or civil fine imposed under this section. The attorney general shall bring an action in a court of competent jurisdiction to recover the fine.

(6) Any civil fines or recovery of any economic benefits associated with a violation of this act and collected under this section shall be paid to the general fund and credited to the department for the enforcement of this act.

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

This act is ordered to take immediate effect.



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Clerk of the House of Representatives.



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Secretary of the Senate.

Approved .....

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Governor.