

# HOUSE BILL No. 6019

June 15, 2004, Introduced by Reps. Amos, LaJoy, Vander Veen, Nitz, Garfield, DeRossett, Meyer, Hart, Caul, Pappageorge, Rocca, Hune, Sheen, Middaugh, Taub, Gaffney, Van Regenmorter, Pastor, Nofs and Cheeks and referred to the Committee on Agriculture and Resource Management.

A bill to amend 1964 PA 283, entitled  
 "Weights and measures act,"  
 by amending sections 29, 31, and 31a (MCL 290.629, 290.631, and 290.631a), section 29 as amended by 1986 PA 194 and section 31 as amended and section 31a as added by 2002 PA 208.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1       Sec. 29. (1) ~~Any~~ A person who assaults or inflicts a  
 2       bodily injury upon ~~—~~ the director, an authorized representative  
 3       of the director, the deputy director, ~~any~~ an inspector, or a  
 4       sealer or deputy sealer in the performance of his or her official  
 5       duties shall be guilty of a misdemeanor punishable by a fine of  
 6       not **less than \$2,000.00** or more than ~~—\$5,000.00—~~ **\$12,000.00** or  
 7       imprisonment for not more than 2 years, or both.
- 8       (2) ~~Any~~ A person who hinders or obstructs in any way the  
 9       director, an authorized representative of the director, the

1 deputy director, ~~any~~ **an** inspector, or a sealer or deputy sealer  
2 in the performance of his or her official duties shall be guilty  
3 of a misdemeanor punishable by a fine of not ~~more~~ **less** than  
4 ~~\$1,000.00,~~ **\$2,000.00 or more than \$12,000.00** or imprisonment  
5 for not more than 1 year, or both.

6       Sec. 31. (1) A person who, by himself or herself or by the  
7 person's servant or agent, or as the servant or agent of another  
8 person, engages in any of the following acts is guilty of a  
9 misdemeanor and may be fined not less than ~~\$1,000.00~~ **\$2,000.00**  
10 or ~~not~~ more than ~~\$10,000.00,~~ **\$12,000.00** or imprisoned for not  
11 more than 1 year, or both:

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

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

26       (i) A properly executed and completed placed-in-service  
27 report has been delivered to the director as notification that

1 the weights and measures have been placed in service by a  
2 registered serviceperson.

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

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

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

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

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

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

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

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

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

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

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

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

21 (2) A person who, by himself or herself or by the person's  
22 servant or agent, or as a servant or agent of another person,  
23 fails to disclose to the department any knowledge of information  
24 relating to, or observation of, any device or instrument added to  
25 or modifying any weight or modifying any measure for the purpose  
26 of selling, offering, or exposing for sale less than the quantity  
27 represented of a commodity or calculated to falsify the weight or

1 measure, if the person is an owner or employee of an entity  
2 involved in the installation, repair, sale, or inspection of  
3 weights and measures, is guilty of a misdemeanor and may be fined  
4 not ~~more~~ **less** than ~~-\$1,000.00,~~ **\$2,000.00 or more than**  
5 **\$12,000.00** or imprisoned for not more than 90 days, or both.

6 (3) A person who, by himself or herself or by the person's  
7 servant or agent, or as a servant or agent of another person,  
8 performs any of the following acts is guilty of a felony ~~and may~~  
9 ~~be fined~~ **punishable by a fine of** not less than ~~-\$1,000.00~~  
10 **\$2,000.00** or ~~not~~ more than ~~-\$20,000.00~~ **\$22,000.00**, by a fine  
11 of not more than twice the amount of any money gained for each  
12 day on which a violation has been found, by imprisonment for not  
13 more than 5 years, or by all of these penalties:

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

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

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

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

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  
5 agreement for the assessment of a civil fine as follows:

6           (a) For a first violation, not less than ~~-\$50.00-~~ **\$500.00** and  
7 not more than ~~-\$1,000.00-~~ **\$2,000.00** plus the amount of any  
8 economic benefit associated with the violation.

9           (b) For a second violation within 2 years of the first  
10 violation, not less than ~~-\$100.00-~~ **\$1,000.00** or ~~not~~ more than  
11 ~~-\$5,000.00-~~ **\$7,500.00** plus actual costs of the investigation and  
12 the amount of any economic benefit associated with the  
13 violation.

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

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

22           (a) Initiate a criminal prosecution.

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

1 other person.

2 (3) Upon finding a violation of any provision of this act or  
3 rules promulgated under this act as a result of the commencement  
4 of an action under subsection (2)(b), the director shall assess  
5 an administrative fine or a civil fine of not more than  
6 \$10,000.00 plus actual costs of the investigation and the amount  
7 of any economic benefit associated with the violation.

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

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

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